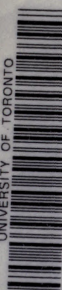

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SELECTED SPEECHES AND ARGUMENTS

OF

LORD O'HAGAN

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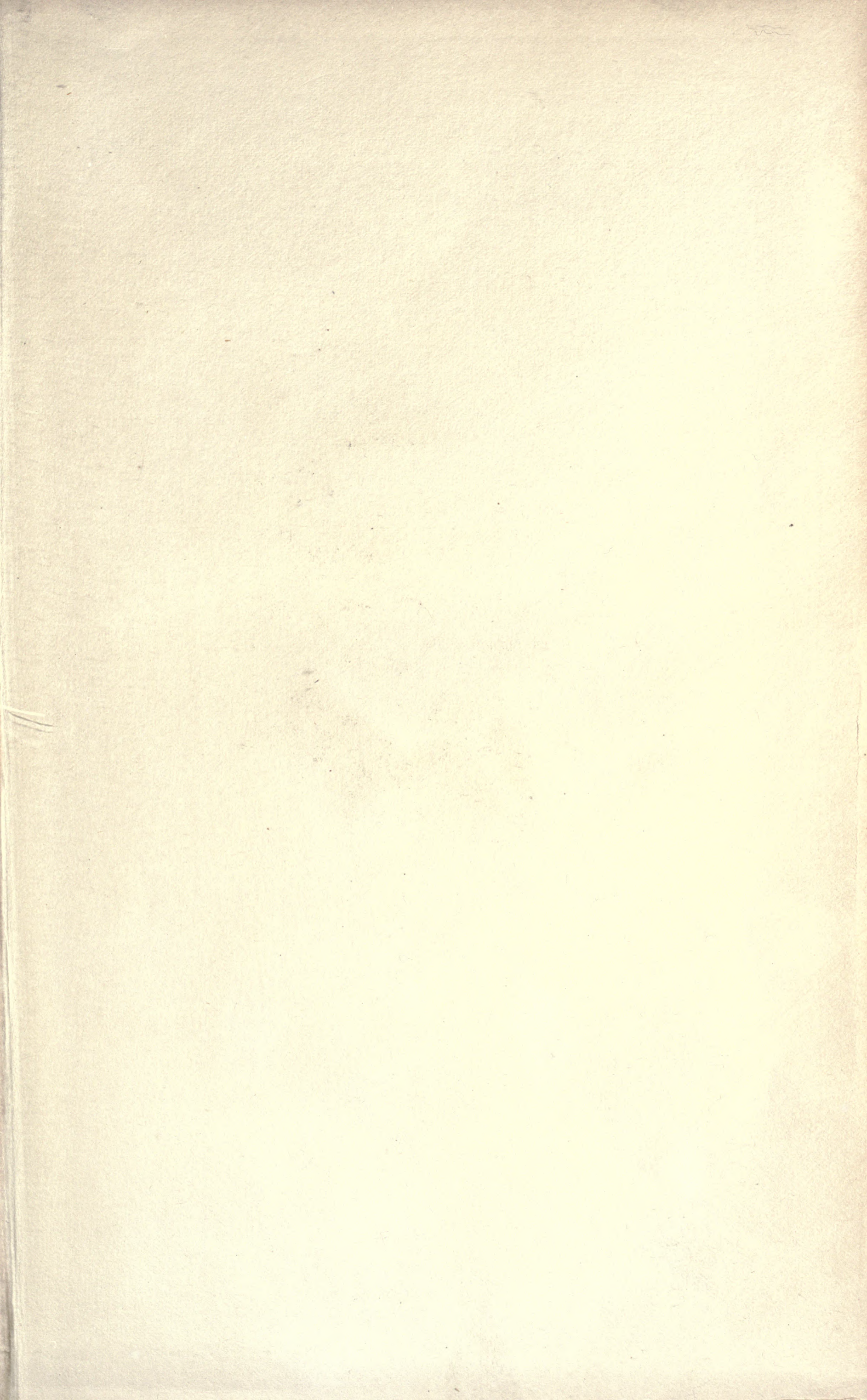

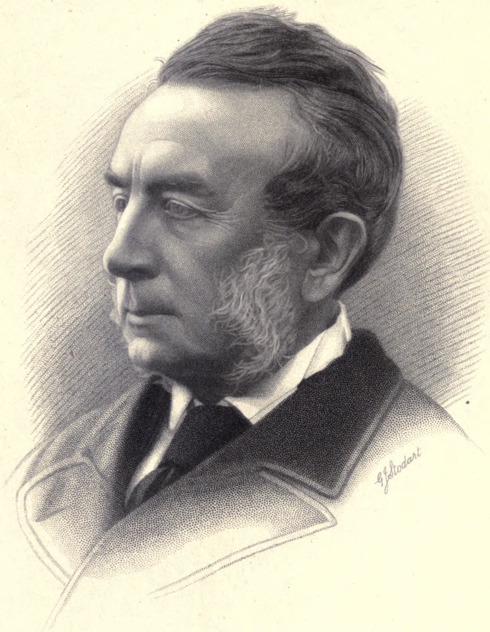
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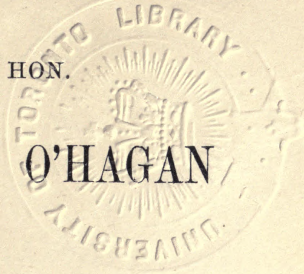
SELECTED SPEECHES AND ARGUMENTS

OF THE RIGHT HON.

THOMAS, BARON O'HAGAN



EDITED BY

GEORGE TEELING

'Who is there who does not identify the honour of his country with his own? And what can conduce more to the beauty or glory of one's country than the recovery not only of its civil but its religious liberty?'

MILTON'S *Second Defence of the English People*

WITH A PORTRAIT

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PREFACE.

My original purpose in collecting Lord O'Hagan's speeches was that he might have, in revising and preparing them himself for future publication, an employment that would interest him during the illness which had necessitated the giving up of nearly all his customary occupations.

Out of the materials I had brought together with this object from various sources and submitted to him, he selected—though not without expressing some misgivings as to whether they were worth preserving—the greater number of the speeches contained in this volume, and he was engaged, with me, from time to time, almost up to the day of his death, in correcting and annotating them.

I was afterwards requested to finish the work, and I have done so with a feeling of gratification at being

permitted to associate my name with that of one whom I so much loved and reverenced—

'Homo amicus nobis jam inde a puero.'

In the arrangement of the speeches and in the composition of the notes I have kept in view, though not exclusively, the design of attracting attention to Lord O'Hagan's consistent and unvarying devotion to the cause of the civil and religious liberties of Ireland. In the capacity of a citizen, he was long looked upon as one of the chief spokesmen of that cause. As an advocate, he was chosen, among the foremost, to defend it in the courts of justice; and both as a member of the House of Commons, and as a Peer of Parliament, he always loyally supported the same cause, and strove, by introducing or helping forward remedial measures, to do away with those evils which, for generations, had hindered its progress.

One speech in defence of a prisoner (Hanratty) indicted for murder, one statement made as Attorney-General in a murder trial (Beckham's), and one sentence—that on William Mackey for treason felony—are given. From these an idea may be formed of Lord O'Hagan's demeanour as defender, prosecutor, and judge.

It will be found also that two Parliamentary speeches are embraced in this collection which were never actually spoken—one was in defence of his own Jury Act, which had been assailed with extreme violence, the other in support of the Compensation for Disturbance Bill, which was thrown out in the House of Lords.

On both these topics he felt deeply, and it was his wish that the speeches relating to them, which he had prepared with much care, should be included among those selected for publication.

A few words in conclusion about Lord O'Hagan's *action*, using the term in its classical sense.

He was gifted with a clear, strong, and singularly musical voice, and he had the additional advantage, as those who knew him will remember, of a fine presence and an expressive countenance. These natural endowments he was enabled to turn to the best account, having been taught the art of elocution in his boyhood by the actor and dramatist Sheridan Knowles, who was accustomed to regard him as his best pupil.

Lord O'Hagan spoke very fluently, in a generally quiet tone of voice, yet with considerable emphasis; and when he was more than usually moved by his

subject, even with emotion. His manner invariably exhibited a becoming deference towards his audience; and in his whole delivery, as well as in his language, there was ever discernible that grave earnestness which so eminently distinguished his character.

THE ABBEY, FORT AUGUSTUS, N.B.
October 28, 1885.

CONTENTS.

PAGE

PREFACE v

SPEECHES ON VARIOUS OCCASIONS.

A speech delivered at a meeting of the National Repeal Association, May 29, 1843 3

A speech delivered at a meeting held in Dublin, April 29, 1851, to petition Parliament against the Ecclesiastical Titles Bill . . 11

A speech delivered at the Mechanics' Institute, Dublin, May 5, 1851 26

A speech delivered at a meeting held in Dublin, June 13, 1853, to petition Parliament against the Nunnery Bill 31

A speech delivered at a meeting of the Catholics of Dublin, December 3, 1853, for the purpose of soliciting aid for the erection of a new church 42

A speech delivered on occasion of the unveiling of a statue of the poet Moore in College Green, Dublin, October 14, 1857 . 50

A speech delivered at the distribution of prizes in the Belfast Workmen's Exhibition, May 28, 1870 57

A speech delivered at the annual dinner in aid of the Newspaper Press Fund, May 20, 1876 64

SPEECHES AND ARGUMENTS AT THE BAR.

PAGE

A speech delivered in the Court of Queen's Bench, Dublin, June 20, 1842, in defence of Charles Gavan Duffy, prosecuted for libel 75

Argument on the motion for a new trial on behalf of Charles Gavan Duffy, delivered at the State trials of 1844—The Queen *v.* O'Connell and others 109

Argument delivered before the visitors of Trinity College, Dublin, December 12, 1845, in favour of the claim of Denis Caulfield Heron, Esq., a Roman Catholic, to be admitted a scholar of the college 151

Argument delivered in the Court of Queen's Bench, Dublin, January 26, 1850, in the case of the Queen *v.* Conway 196

A speech delivered at the Armagh Assizes, July 1850, in defence of Bryan Hanratty, indicted for wilful murder 224

A speech delivered in the Court House, Green Street, Dublin, December 7, 1855, in defence of the Rev. Vladimir Petcherine, accused of contemptuously burning the Authorised Version of the Bible 243

Argument delivered on behalf of William O'Malley, before Lord Chancellor Napier, in the Court of Chancery, November 16, 1858, in the matter of the O'Malleys minors 285

A speech delivered for the prosecution at the trial of Thomas Beckham for wilful murder, at a special commission, in the city of Limerick, June 16, 1862 309

Sentence upon William Mackey, convicted of treason felony at the Cork spring assizes, March 1868 321

PARLIAMENTARY SPEECHES.

PAGE

A speech delivered in the House of Commons, July 18, 1863, in opposing a motion to reduce the vote for the expenses of National education in Ireland 329

A speech delivered in the House of Commons, April 8, 1864, in opposing a motion for a select committee to inquire into certain allegations against the fathers of the Brompton Oratory 349

A speech delivered in the House of Lords, March 13, 1873, on the motion for second reading of the Deceased Wife's Sister Bill . 357

A speech delivered in the House of Lords, June 30, 1873, on the motion for second reading of a Bill 'for the better government of Ireland' 366

A speech delivered in the House of Lords, June 11, 1874, in support of a motion for the repeal of the provisions in the Judicature Act (1873) abolishing the appellate jurisdiction of the House of Lords 377

A speech delivered in the House of Lords, July 16, 1874, in moving the second reading of the Municipal Privileges (Ireland) Bill 391

A speech delivered in the House of Lords, June 28, 1878, on the second reading of the Irish Intermediate Education Bill . . 401

A speech delivered in the House of Lords, July 8, 1879, on the second reading of the University Education (Ireland) Bill . 417

A speech delivered in the House of Lords, May 19, 1871, in moving the second reading of the Irish Juries Bill . . . 428

A speech delivered in the House of Lords, August 4, 1876, on the second reading of the Juries Procedure Bill 438

A speech (not spoken) on the motion for a select committee of the House of Lords to inquire into the operation of the Irish Juries Act 442

General introduction to speeches on the Irish Land Laws . . 453

PAGE

A speech (not spoken) on the motion for second reading in the House of Lords of the Compensation for Disturbance Bill . 457

A speech delivered in the House of Lords, August 1, 1881, on the second reading of the Irish Land Bill 473

A speech delivered in the House of Lords, August 1, 1882, on the third reading of the Arrears of Rent (Ireland) Bill . . . 502

NOTES 511

SPEECHES ON VARIOUS OCCASIONS

A SPEECH DELIVERED AT A MEETING OF THE NATIONAL REPEAL ASSOCIATION, HELD IN THE CORN EXCHANGE, DUBLIN, ON MAY 29, 1843.

INTRODUCTORY NOTE.

From 1836, when Mr. O'Hagan—who was then twenty-three years of age—was called to the Bar, and left his native town of Belfast to take up his residence in Newry, till 1840, when he went to live permanently in Dublin, he exerted himself unceasingly in the advancement of the cause of reform in Ulster, and on account of his services in its behalf he was chosen in the year 1839 as adviser on the North-East Circuit to the Reform Registry Association.

Several speeches made by him during this period at public meetings in the North of Ireland are given in the newspapers of the time.[1] Although these have a certain interest—not only as helping to illustrate the development of his style of

[1] Among these are a speech which he delivered when called upon to respond to the toast of 'The Ulster Reformers,' at a public dinner given to Daniel O'Connell in Newry on April 9, 1839, reported in the *Newry Examiner*; a speech on May 2, 1840, at a great meeting in Belfast, convened to protest against Lord Stanley's Registration Bill, reported in the *Freeman's Journal*; a speech in reply to the toast of his health at a public dinner given in his honour on the eve of his departure from Newry, October 28, 1840, reported in the *Newry Examiner*. As early as 1832 Mr. O'Hagan had begun to take some part in politics, and a speech delivered by him at a general meeting of the National Political Union in London is reported in the *True Sun* of August 30 of that year. Again, on September 11 of the same year, on occasion of the first election held under the reform *régime* in Belfast, he addressed the electors in support of the Liberal candidates, Mr. W. Sharman Crawford and Mr. Robert James Tennent. This speech is given in the *Northern Herald* of that date.

speaking, but also as showing the consistency of his political career from the outset—yet, since they do not seem to have been very carefully reported, and were never revised by himself, it has been thought better not to include them in this selection.

On coming to Dublin Mr. O'Hagan devoted himself almost entirely to the practice of his profession, and scarcely ever interfered in politics. He was frequently asked to join the Repeal movement, but he could not see his way to give his adhesion to O'Connell's programme.

He was of opinion, however, that some change in the legislative relations between Great Britain and Ireland, which would give the latter authority over her own internal affairs, was desirable. Accordingly, when on May 29, 1843, he felt himself called upon to protest publicly against the arbitrary conduct of the Government in dismissing a number of magistrates for attending Repeal meetings,[1] and made choice of the platform of the Repeal Association as the most fitting for his purpose, he took occasion when speaking from thence to give expression to his own views on the subject of the Union.[2]

[1] Daniel O'Connell, Lord French, Sir D. Bellew, Colonel Butler, M.P., C. Power, M.P., Count Nugent, E. Roche, M.P. (afterward Lord Fermoy), and seventeen others were deprived of the Commission of the Peace by the Lord Chancellor (Sir E. Sugden) for having attended Repeal meetings or joined the Repeal Association.

[2] *Vide* note A. at the end of the volume.

SPEECH.

I am here, sir, on the impulse of the occasion to enter my solemn protest against the aggressions which have been made, and the worse aggressions which seem to be meditated, on the constitutional rights of the Irish people.

I should have desired to pursue the quiet course of professional labour to which my life is devoted without any manifestation of my peculiar opinions, but when the privileges of freedom of thought and speech on questions of moment to Ireland cease to be held sacred, I think that personal convenience and personal interest should give way to a sense of political duty, and that no man, however powerless he may be, ought by his tacit acquiescence to suborn the infliction of fresh grievances upon his country. I am here because I think that from this place the most effectual appeal may be made in maintenance of the constitution, and not because my opinion on the question of the hour is altogether in unison with that of most of those whom I address; and as I desire to be misconceived by no man, I may be permitted to intrude my views on this subject upon the patience of this assembly.

I believe that the system of centralisation as it is developed in these islands has been partial in its action and mischievous in its results, and that a local legislature for local purposes, conducted by men of the country who know its people, understand their wants, respect their opinions, sympathise with their feelings, and whose interests are identified with theirs, would be of great practical utility to

Ireland. I consider that such a legislature, developing our resources, and applying them, with intelligence and faithfulness, to our national improvement, may fairly and hopefully be sought, and that by the peaceful attainment of such a legislature our material prosperity and our intellectual progress would be essentially advanced.

But I am at the same time of opinion that for Imperial purposes—not touching her own internal economy—Ireland should not abandon such influence as she may fairly claim in the Senate of an empire which has been so much enriched by Irish treasure, so much glorified by Irish bravery, and so firmly cemented by Irish blood. And thus distinguishing between the proper objects of local and imperial legislation, and securing to our country fitting guards, sanctions, and guarantees for her honour and her rights in a federal connection with Great Britain, I am satisfied that the aims of reasonable men would be accomplished, our real welfare sufficiently promoted, and all danger of separation or interference with the integrity of the empire effectually obviated.

These opinions are cherished by very many who do not mingle in political life.[1] They are in my judgment sustained by the teaching of history and justified by the circumstances of the country and the time. They suggest a solution of the difficulties involved in the relations of these kingdoms, which sooner or later, as the public business of each grows more complicated and unwieldy, and the existing machinery of the State is found more and more unequal to work it efficiently, must attract the attention and compel the acceptance of public men. I am not here to discuss these

[1] These views were then or afterwards shared by Lord Glengall, Colonel H. H. Caulfield (brother of the Earl of Charlemont), Sharman-Crawford, M.P. for Belfast, D. R. Ross, M.P. for Belfast, W. Eliot Hudson (Master in Chancery), and Thomas Hutton, M.P. for Dublin, and most of the Belfast Whigs. They were advocated by many journals, English as well as Irish, but the collapse of the Repeal agitation and the rise of Young Irelandism deprived them of influence for the time.

views, but I have thought it right to state them clearly, that there may be no question as to my real sentiments.

Holding such opinions in all sincerity, and differing much from many here who honestly entertain the larger views adopted by popular enthusiasm in favour of the repeal of the Act of Union, I should not have thought of addressing you, but that I deem the period one of difficulty and danger to public liberty, and I have come expressly and distinctly for the purpose of bearing testimony against any attempt to overawe the free mind of Ireland, and stifle the expression of her feelings on subjects which she may legitimately discuss. And such an attempt I hold to have been made in the late dismissals of the Irish magistrates, and especially in the argument by which those dismissals have been mainly justified. I hold that war has been declared against the opinion of the country; and that an act has been done as ominous of coming evil as it is indefensible in principle and will be injurious in practical effect. Men are deposed from places of trust and honour. For what? For no crime proved—for no crime charged against them.

The people of Ireland are indisputably entitled to proclaim their sentiments, be they right or wrong, on a measure which they hold of great national moment. The right to petition for the repeal or amendment of the Act of Union is as clear—as settled, secured by sanctions as solemn, and authority as high as that by which the Lord Chancellor holds his office. The assemblies which assert this right he does not allege to be illegal. But because magistrates have dared to attend meetings admitted to be authorised by law, to discuss questions which must manifestly be open for discussion, whilst the shadow of the constitution remains amongst us, these magistrates are visited with pains and penalties.

The minister of the day has thought fit to declare that he does not approve of certain political opinions;[1] and what before his declaration was innocence becomes guilt when it is made. There is no appeal to the tribunals of the country to decide on the propriety or impropriety of the conduct of the justices; there is no appeal to Parliament to limit the privileges of the subject or enlarge the prerogatives of the executive. The Prime Minister is erected into an autocrat; and on the ground that he and his cabinet are hostile to alteration in an existing statute, the Queen's subjects, who, until the Legislature shall put its ban upon opinion, have as good a title to think and act in relation to that statute as any minister, or body of ministers—the educated gentlemen of Ireland, who have merely exercised the commonest privilege of their citizenship, without violating any ordinance of God or man—are deprived of the Commission of the Peace, as if they had committed or countenanced a crime.

It is said that riots might have taken place at the assemblies they attended, and that they could not be trusted to quell such riots; and the necessary conclusion from this reasoning is, that for attending any meeting a magistrate should forfeit his authority. May not anti-repealers be as riotous as repealers? and shall none of the Queen's justices

[1] On May 9, 1843, in reply to a question asked in the House of Commons as to whether the Government intended to take any steps to suppress the Repeal agitation and maintain the Legislative Union, Sir Robert Peel (the Prime Minister) said, 'Her Majesty's Government in this country and in Ireland are fully alive to the evils which arise from the existing agitation, and there is no influence, no power, no authority which the prerogatives of the Crown and the existing law give to the Government which shall not be exercised for the purpose of maintaining the Union. I am prepared to make the declaration which was made, and nobly made, by my predecessor, Lord Althorp, that deprecating as I do all war, but above all, civil war, yet there is no alternative which I do not think preferable to the dismemberment of the empire.' The Duke of Wellington, in answer to a similar question in the House of Lords, spoke to the same effect.

mingle with those who meet for the purpose of sustaining the Union? Who ever heard from the Conservative party a call to dismiss the magisterial leaders of the tens of thousands assembled at Hillsborough in '35? Did Sir James Graham whisper a complaint of the 'myriad musterings' at Birmingham which carried the Reform Bill? And I say, moreover, that this measure is likely to be as dangerous in its results as it is evil in its principle.

Years of practical justice had inspired the people with confidence in the administration of the law. The Bench was occupied by men in whom they had reliance; and the blessed fruits of kindly and impartial government were manifested in the wholly unexampled tranquillity of Ireland. The dominion of order was established, and, had the spirit of a wise executive extended its benign influence to the Legislature, and taken the forms of settled laws and abiding institutions, the peace and prosperity of the nation would have been secure. Unhappily a change has come upon us, and by this act of the Administration Ireland sees the friends in whom she had confidence stripped of their power to help her, and faction again enthroned on the seat of Justice, to which the blending of parties and opinions had begun to make her people look with hope and trust.

But mischievous as the actual and immediate consequences of this measure must be, it is, in my judgment, chiefly to be denounced and opposed on account of the pernicious principle which it involves.

I look upon this interference with the people's right of freely holding and expressing opinions upon questions lawfully open to discussion, as really and by necessary result imperilling the whole structure of civil liberty of which that right is the foundation and the main support; and it is because they are persuaded of this that many, not only Liberals but even Conservatives, who, although they have

no sympathy with the Repeal movement, yet possess national feeling, and respect in others the claim to rights which are dear to themselves, are unanimous in their condemnation of these rash and unconstitutional proceedings of the Tory ministry.[1]

[1] In a discussion which took place in the House of Lords on occasion of the dismissal of the magistrates, Lord Campbell and Lord Cottenham, amongst others, strongly condemned the step taken by Lord Chancellor Sugden at the instance of the Government, as unjust and highly inexpedient.

A SPEECH DELIVERED AT A MEETING HELD IN THE ROTUNDA, DUBLIN, ON TUESDAY, APRIL 29, 1851, *TO PETITION PARLIAMENT AGAINST THE ECCLESIASTICAL TITLES BILL.*

INTRODUCTORY NOTE.

It will be in the recollection of many that Great Britain was disturbed in the autumn of 1850 by a violent anti-Papal agitation, on account of the establishment of the Roman Catholic hierarchy in England. At the assembling of Parliament in February 1851 Lord John Russell, then Prime Minister, whose famous letter to the Bishop of Durham had done much to stimulate the agitation, introduced a Bill having for its object 'to prevent the assumption of certain ecclesiastical titles in respect of places in the United Kingdom,' and containing clauses. From the very outset the measure was strenuously opposed by the friends of religious liberty in the House, and numerous meetings were held by Catholics throughout the country to protest and petition against it.

After a stormy and protracted debate leave was given to bring in the Bill; but a few days later, from other causes, the Government resigned. There was much difficulty in forming a new ministry. At one time an arrangement by which Lord Aberdeen and Sir James Graham were to join with Lord John Russell was almost completed, but it fell through owing to a disagreement concerning the Ecclesiastical Titles Bill. Lord Aberdeen explained in the House of Lords that the difference with Lord John Russell arose exclusively on this question. 'For,' he said, 'both my right honourable friend and I myself

feel an invincible repugnance to adopt any measure of penal legislation towards the Roman Catholic subjects of the country.'

Ultimately the old Government came back to office, and the Ecclesiastical Titles Bill, considerably modified, was presented for second reading. It passed this stage on March 25, in spite of the vehement opposition of several English and Scotch, as well as Irish members.

The anxiety and indignation with which Catholics had regarded the measure from the beginning were in no way lessened by the alterations which had been made in its provisions, and their feelings found expression in repeated public demonstrations. An aggregate meeting of the Catholics of Ireland was held at the Rotunda in Dublin, for the purpose of petitioning Parliament against the Bill.

The Honourable Charles Preston acted as chairman on the occasion.

SPEECH.

I agree with my friend Mr. Fitzgerald that this is an occasion of supreme importance. The question at issue affects nothing less than our religious liberty. If it were not of so great moment, if it concerned merely some political controversy, I for one should not be here; but as it is, I have deemed it my plain duty, not only as a loyal Catholic, but as a lover of justice and freedom, to answer the call that has been made upon me.

I beg to propose the fourth resolution :—

> That the warmest thanks of this meeting are due, and are hereby cordially tendered, to the Right Hon. Lord Aberdeen, the Right Hon. Sir J. Graham, and the other English and Scotch members of the Legislature, to whom we are so deeply indebted for their generous and powerful advocacy of the principles of religious liberty and the rights of the Catholic people of the empire.

To the eminent statesmen whom this resolution names, and to those of every party in the Legislature by whom they have been efficiently aided, the gratitude of the Catholics of the empire should be warm and enduring. They have been our friends,—our earnest, unselfish friends. When old allies passed from us, and old adversaries renewed their assaults with more than their ancient virulence,—when the evil spirit of sectarain fanaticism took possession of a great people, and those who stood fast by truth and liberty could assert their sacred cause only in the presence of over-

whelming numbers, at the expense of power and office, and the favour of the multitude,—a few good men withstood the torrent of bigotry which has been let loose through the land; and we should not be worthy the name of Irishmen if we were not deeply thankful for their great services. Lord Aberdeen and Sir James Graham have been selected as the most prominent amongst them; but we do not forget the powerful and generous efforts of the rest;[1] and to all of them we should record our gratitude. And, sir, it is well for us to remember in this our time of trial that, though popular clamour be against us, though majorities in Parliament echo its intolerant decrees, though many of those who on former occasions have 'knit their strength to ours' in the glorious struggle for religious and civil liberty, are not with us now, we have still on our side the practised talent, the old experience, the ripe statesmanship of the ablest men of whom the country boasts.

Lord Aberdeen has a European reputation and a European influence, and he will be no party to penal legislation against the Catholic Church. He will not bow to the idle prejudices of the hour at the expense of the permanent interests of freedom and humanity. Chiefly conversant with the foreign relations of the empire, he knows the elements that are spread abroad throughout the world,—the fearful elements of strife, and discord, and convulsion,—and he will not, in the misused name of Protestantism, lend himself to the persecution of that Church which, as in earlier times it shielded European civilisation from the ruin with which it was threatened by barbarian hordes, stands now between the existing order and religion of mankind and the assaults of the pantheistic unbelief and

[1] Among these were Mr. Gladstone, Mr. Cobden, Mr. Bright, Mr. Sidney Herbert, and Mr. Roundell Palmer (now Lord Selborne).

anarchic socialism which are pervading, too widely, the nations of the Continent, and penetrating too deeply the heart of Britain itself.

His large acquaintance with the condition and the prospects of modern society has probably taught him that the wisest statesman whom England ever saw was justified in the solemn declaration,—

> It is a great truth that, if the Catholic religion is destroyed by the infidels, it is a most contemptible and absurd idea that this or any other Protestant church can survive that event.

So wrote Edmund Burke to Sir William Smith more than fifty years ago; and with what plain and utter scornfulness would that great Irishman, had he been living now, have witnessed the miserable religious agitation which will be the historic scandal of our time. Lord Aberdeen, unhappily, may not have many supporters amongst his peers, and, more unhappily, children of the Church may be found amongst his adversaries; but in the House of Commons we boast the aid of a gallant band of its most accomplished members.

Those who had followed Sir Robert Peel stand manfully by the policy with which he identified the latter and the worthier period of his long career, when the complete development of his great powers, and the teachings of a wide experience, enlarged his views beyond the horizon within which faction and party had narrowed his mind, and made him the judicious and successful champion of freedom, alike in religion and in commerce. Sir James Graham has refused to sustain the retrogressive policy of the Government. He knows, and he proclaims, that the Catholics have violated no law, and he will not subject them to penal infliction. He knows, and he proclaims, the true meaning and spirit of the Liberal legislation of recent years, which he mainly aided to accomplish; and he declines to undo

that work of beneficence,—to enter on a new war against Opinion,—to dissolve the engagements which have subsisted between the Legislature and the Catholic people, and to teach a third of the subjects of the Queen that they are to be treated still as a class separated from the rest, and subjected to peculiar pains and penalties as a religious body.

The violence of mobs, whether they are clothed in frieze or in broadcloth, may prevail for a time; but it passes away, and its evil influences along with it. The thinker rules the world. The statesman, who sustains the truth of all time against the fantasy of the hour, will surely, in the end, prevail, and the thinkers and the statesmen of Great Britain are mainly with us. There are with us, too, the leading representatives of that mighty interest which, in later days, has swayed the destiny of England,—which carried the Reform Bill and accomplished Free Trade, in spite of the most desperate opposition of the other great powers of the State. They are men of energy, of settled purpose, and of indomitable will; they wield a powerful and compact organisation, which has the prestige and the confidence of political victory; they have defied the intemperate folly and rabid violence of the time; and their constituents have approved their generous conduct. In these things we have surely ground for hope.

The sense of England is not all perverted. What spirit of justice there is amongst her people may work itself clear of the mists and heats of the fanaticism by which it is obscured; and we shall yet, in the strength of a good cause, and with the aid of just men, be enabled to withstand the evils which assail us. But, to accomplish this great result, our attitude must be firm and bold. We must stoutly preserve the rights which we have laboriously won; and, standing within the constitution, and upon the law, we must defend our Church and our freedom, in the spirit of temperance,

but with uncompromising resolution. Yet it would be wrong to imagine, whilst we should look hopefully and courageously to the future, that the peril we encounter is not of the gravest character.

Regarding the events which have occurred, and the measures which are threatened, it seems to me as if Time had gone back on his course, and we stood again in the gloom of the early penal days. We have, in the Bill of the existing Ministry, even as it has been amended, the seminal principle of a new code of exclusion. Its detailed provisions, on which I have been called elsewhere to offer my opinion,[1] have been abandoned; but enough remains to make it our plain duty to offer all possible constitutional resistance to the measure. A preamble, suggesting a doubt which never perplexed the mind of any lawyer, is introduced, to found a legislative declaration of the voidness and illegality of Ecclesiastical Acts,—which no lawyer, as the law now stands, would venture to pronounce void or illegal. No one can tell, if that preamble be accepted by Parliament, making an erroneous statement of the law, based upon an erroneous statement of the fact, how far it may operate, as to the past and as to the future, on the interests of the Roman Catholic Church. And it is followed by an enactment extending the disabilities, which, on full consideration, and with full knowledge of all the circumstances bearing upon the matter, were held by Parliament in 1829 sufficient

[1] On the first appearance of the Bill an address was issued by the Catholic Bishops of Ireland to their flocks, on 'the threatened penal enactment,' to which was added an appendix containing the legal opinion of Mr. O'Hagan on its provisions. He maintained that the enforcement of the intended measure, as it then stood, would prevent the free observance of the discipline of the Church and interfere injuriously with Catholic trusts and charities.

In the year 1868, Mr. O'Hagan (then a Judge of the Common Pleas) gave evidence before a Committee of the House of Commons appointed to consider a Bill brought in for the Repeal of the Ecclesiastical Titles Act.

securities for the Church established, and at which, a very little time ago, the Prime Minister scoffed as futile, and fit to be abolished altogether.

But this Bill, evil as it is in principle, calamitous as it must be in result, is not bad enough to satisfy the anti-Papal spirit of England; and accordingly, between the Government that is and the Government that hopes to be, we have a rivalry in the race of persecution, and the future Attorney-General of England betters the example of its actual Minister by proposing an amendment so intolerant in its character, so effectual in its provisions, that it seems to me as mischievous as any individual portion of the penal code; and if it becomes law, the exercise of the Catholic religion, according to its established discipline, will be impossible, unless the common informers whom it calls into action be more considerate and more forbearing than the statesmen who may adopt it. It appears to have been conceived in the spirit of the most rampant and reckless persecution, and it must operate, if operate it ever can, to the practical destruction of the religious rights of millions of Irishmen.

The exercise of jurisdiction in any diocese or district by any Roman Catholic prelate or priest, under the authority of the Holy See, the procuring or publication of any brief or rescript will, if this amendment become law, be made punishable by fine for the first offence, and transportation for the second. I do not go into detail. I do not lose time by criticism upon the terms of this astounding proposition. It is enough to say to any assembly of Irish Catholics, who know the doctrine of their Church, and the nature of her sacred offices, that such a law would amount to a prohibition of the performance of any spiritual function, for the discharge of any spiritual duty, by any of her ministers. It would amount to a proclamation by the Legislature, that the

Catholic religion should cease to have practical existence within the British realms.

And for all these things what is the justification? We are told there has been an aggression on England in the establishment of a Catholic hierarchy. An aggression! By whom? with what object? with what result? It is said tauntingly that this grievous deed has been done by a prince weak in all worldly strength, without army or fleet or treasury, to give him worldly influence, but yesterday an exile from his realm, and even now indebted for protection to a foreign power. All this is undeniable. Though he be the oldest sovereign in Christendom, seated on a throne which was established before the existing royalties of Europe had sprung into being, which has endured through all the vicissitudes of ages, whilst dynasties have been overthrown and empires have disappeared, and society has passed through all its phases of decadence and revival, of despotism and liberty, of barbarism and civilisation,—though he be the successor of that long line of pontiffs which stretches back through the glory and the gloom of eighteen hundred years, till it connects us with the Church of the catacombs and the martyrdom of the apostles—still he is a weak and, in all the means and appliances of human government, a powerless prince. What power he has is moral, merely sustained in the will, acknowledged by the judgment, sacred to the conscience of hundreds of millions of men. That power rests for its existence on no external force, on no temporary circumstances, on no local position. He can exert it equally whether he occupy the Palace of the Vatican or the prison of St. Angelo, whether he sway the sceptre of an independent sovereign, or leave for ever the Eternal City, and wander through Catholic Christendom, dependent for his daily bread upon the bounty of his spiritual children. By virtue of this moral power,

affecting the interior spirit, the immortal soul of man, he has done what he has done in England. He has exerted, he has had the capacity for exerting, no temporal authority in establishing her hierarchy.

His influence subsists solely in the free opinion of free citizens, who acknowledge his supremacy as the earthly head of their Church, and submit to it constrained by no coercion but that of the faith which they cherish, as the source of their dearest happiness here, and the warrant of their eternal hope hereafter. With this free opinion what right has the Legislature to interfere in a country whose boast it is that religious liberty is assured to all the people? Breaking no law, injuring no man's property, interfering with no man's right, attached to a constitution which they value, and loyal to a sovereign whom they love, how have the Catholics of England deserved that the internal arrangements of their Church, and their relation to its Chief Pastor, should become the subjects of penal enactments? For their religious convictions, for their religious acts, they are responsible to their Creator; but with those convictions, and with those acts, whilst they are consistent with the well-being of society, legislative intermeddling is a plain invasion of that liberty of conscience which good men will ever cherish, with John Milton, as 'above all liberties.'

And if the penal legislation that is contemplated for England be thus unjustifiable, what shall be said of its introduction into Ireland? We make the cause of our brethren our own, we stand by them faithfully and firmly; we have one faith, one hope, one interest; and we do not separate our strength from theirs, but confirm our common cause when we demand what pretence can any man suggest for legislating at this time, and in this way, against the Catholic people of Ireland? Have they made any aggression on any one? Have they arrogated any new ecclesiastical privilege, or

sought any new development of their ecclesiastical system? Their episcopate they believe to be as ancient as the Christianity of their country. Their discipline has undergone no change. Through all the misery and prostration of the penal times, when they were deprived of every privilege of citizenship, and every right of humanity, when they were forbidden to possess estates, or exercise franchises, or receive education in their own land—when their priests were proscribed, and their prelates driven into exile—their hierarchy continued still unbroken. The division of the island into sees, of which, as an insolent innovation, such complaint is made in England, always subsisted; and every effort failed to extinguish their religion, or prevent the ministrations of their pastors. In latter days, when better counsel prevailed with the Legislature, and the policy of persecution was found to be as foolish and as futile as it was unjust, and statesmen acknowledged the necessity of conceding privileges which it was dangerous to withhold, and the wisdom of bringing the laws of the country into harmony with the opinion and the feeling of the people, the Catholic bishops continued to do as they had always done, but received the recognition which had been before denied them; and in Acts of Parliament, and in speeches of Ministers, and in official communications, their position as a hierarchy was admitted, according to the truth.

What reason, then, can be assigned for this sudden change, so far as it respects Ireland? What have we done, as a religious body, to warrant a departure by the Government of the empire from the courses which have been pursued by the leaders of the great parties in the State during the last twenty years? If in England this legislation is unjustifiable, in Ireland it has no colour of justification, and the impolicy and injustice of such an interference

as it contemplates with the free opinion and the free acts of the Catholic subjects of the Queen, which would be great and grievous if they injured England only, become enormously aggravated when they are considered as affecting the vast majority of the inhabitants of this kingdom, who desire only to be allowed to continue in the enjoyment of the privileges which they possess by ancient usage and by existing law, and on whose liberties the contemplated aggression is perfectly gratuitous and wholly unprovoked.

I have glanced at the pernicious character of the Bill which we oppose, and I have stated some of the reasons for our assertion that it is unjustifiable in its origin, as it must be mischievous in its effects. Only a few words further of the probable results of this new attempt against religious liberty. Is it possible that, in the middle of this century, and in this free land, we can be required to argue that such an attempt must issue in disaster and defeat? Does not the room in which I stand throng with silent memories of Ireland's struggles against the worst system of sectarian ascendency which the world ever saw? And do not these memories speak eloquently of the folly and madness of legislation against opinion? Do I need to proclaim to the assembled Catholics of Ireland who won the great victory of emancipation, that though for a time such legislation may work deep misery and deadly mischief, it cannot attain its evil purposes? Are the lessons of history useless, and unworthy the regard of the statesmen of the day? or, if they be not, is any one amongst them more distinct and solemn than that which teaches the vanity of attempting to coerce opinion by penal infliction, and control the religious action of a community by penal legislation? Will that policy be successful now which failed so miserably before?

When the system of organised persecution, which it was fondly imagined would root out Catholicism from our country, commenced after the Revolution of 1688, the whole Irish race was probably less in numbers than that portion of it which now permanently dwells in Great Britain alone, yet the effort to destroy its religion was even then found vain and idle. Misery enough was indeed inflicted—the peasantry were pauperised,—the proprietary were reduced,—the material interests of the country suffered grievously from the denial of freedom of conscience; but still the people grew and strengthened, and at last they lifted up their heads, and assumed the port, and spoke the words of men desirous to be free.

And though for many a year their prayers were treated with contumely and indifference,—though their petitions were literally kicked from the House of Commons,—they did not pause upon their course. Little by little, and day by day, their appeals for justice impressed the minds of the good and the wise; and at last the time was ripe, and he appeared whom they delighted to call their Liberator; and though in much and many things I ventured to differ from that illustrious man, may the hour never come when his name shall be mentioned in an assembly of Catholic Irishmen without grateful reverence.

At last the time was ripe, and emancipation was accomplished. The great warrior and the wise statesman told the whole world that the penal policy could no more be maintained, that it had been a mistake and a failure, and that it was impossible to govern Ireland longer on the principles of exceptional legislation as to religion and sectarian ascendency in the State. We fondly deemed that the great charter which was then achieved would endure for ever. The principles of religious liberty had received a solemn recognition from a reluctant ministry,

and we believed that, once established, it could never be disturbed. And are we now, when twenty years have come and gone, to begin again an unholy sectarian strife? Are we again to have the fundamental doctrines of freedom of opinion and freedom of worship called into question, and to hear ourselves declared still a peculiar class, to be dealt with on principles and affected by restrictions which are not extended to our fellow-subjects? I feel myself profoundly depressed when I think that this is not only possible, but the miserable fact. Earnestly desiring the maintenance of order, the supremacy of the law, and the harmonious action of men of every creed in the promotion of their common welfare, and the welfare of that poor country which sadly needs the earnest help of all, I look with the deepest pain upon this most unhappy legislation, which tends to exacerbate sectarian feeling,—to set country against country, and man against man,—to unsettle the minds of the people, and distract them from the needful attention to their common duties,—to disorganise our social state and destroy our social prosperity.

But these considerations, depressing though they be, interfere in no respect with our plain duty, which is to resist, with wisdom and with temperance, but with vigorous determination, every assault on our religious liberty, every attempt at exceptional legislation against us on the score of religious faith, every interference with the sacred rights of conscience. And to the fit discharge of this great duty we are inspired by the consciousness of a good and holy purpose,—by the sympathy and support of wise and able men,—by the testimony of all history that, in such a cause as ours, a people fail only from fault or error of their own, and by the recollection that we are the descendants of those who, though their mournful history may have comparatively little of glory in arts or arms to

illumine it, were glorious in the heroism with which they clung to principle and sustained oppression for conscience' sake.[1]

[A series of amendments of a most stringent character, which even the Government opposed, were introduced into the bill while it was passing through Committee, and in this aggravated form it left the House of Commons. A stand was made against its passage through the House of Lords by Lord Aberdeen and a few other peers, but unsuccessfully, and on July 29 it was read a third time, and received the royal assent.

The law, however, was never enforced, and in the year 1871 it was quietly repealed.]

[1] In acknowledging a copy of the resolution proposed by Mr. O'Hagan, and unanimously adopted by the meeting, Lord Aberdeen wrote: 'I am duly sensible of the distinction conferred on me, and I beg to assure you of my determination to persevere in the course of conduct which has procured for me the good opinion and confidence of the meeting.' And Sir James Graham wrote: 'I am glad that my discharge of a public duty should have won for me the approbation of my Roman Catholic fellow-countrymen, and it is my sincere desire that they should continue to enjoy without molestation the utmost freedom in the exercise of their religious rights.'

A SPEECH DELIVERED AT THE MECHANICS' INSTITUTE, DUBLIN, ON MAY 5, 1851.

INTRODUCTORY NOTE.

THE Mechanics' Institute of Dublin was founded in the year 1837. The object of the Institute, according to the prospectus,

> Is to instruct the people in the principles of the arts they practise, and in other branches of sound and useful science and literature ; to promote social and friendly intercourse ; to give impetus and direction to popular education, and generally to offer facilities for intellectual self-improvement.
>
> For the above purposes a Library, containing upwards of 6,000 Volumes, a News Room as well supplied as any in the city, Classes in Commercial knowledge, a French Class, Classes in numerous Scientific and Technical subjects, and Art Classes have been established.

On May 5, 1851, a new lecture hall was opened. The members and several well-wishers of the institution, including the Lord Mayor, Mr. (afterwards Sir) Benjamin Lee Guinness, Mr. (now Sir) Samuel Ferguson, Mr. Isaac Butt, Mr. James Haughton, and Mr. O'Hagan, attended at an entertainment which was given on the occasion. In the course of the evening some of these gentlemen addressed the meeting, and Mr. O'Hagan being called upon made the following extempore speech.

SPEECH.

My Lord Mayor, when I was honoured with the invitation of the Committee, I had not the least notion that I should be invited to address this meeting. When I came into the room I was asked to say something to you by my excellent friend Mr. Haughton; and I cannot look on the brilliant scene before me without referring to the eulogium that has been so worthily pronounced upon him. He has laboured to establish this institution with untiring benevolence and successful energy, and he must feel that in the awakened intelligence, and in the grateful hearts of the citizens of Dublin, for whom he has accomplished so many benefits, he has his rich reward. But though I have not been allowed to think beforehand of the topics which might fitly be addressed to such an assembly, this meeting is, in itself, sufficiently suggestive of pleasing and exalting thoughts. You, my Lord Mayor, distinguished not more by station than by character, preside over an assembly in which all that is great and good in Ireland is so honourably represented. Our literature is represented by one whose gentleness and nobleness of nature are as remarkable as his fine genius, and the rank it gives him in the commonwealth of letters— I mean Dr. Petrie. Our art is represented by a man whose works have won him a great reputation throughout the empire, which will extend and be enduring—Christopher Moore. Our professions have assembled here some of their most eminent members, and the clergy of our city give the sanction of their presence upon the platform to an insti-

tute in which knowledge and religion have never been dissociated.

Glancing from this assembly to the noble object which has brought it together, what a field is there for pleasant reflections! How gratifying it is to consider that when the toil-worn man leaves the workshop in which he has laboured from the early morning, he will not be driven to the haunts of dissipation to spend the hours that are left him to enjoy; but that, in your library, he can cultivate the mental powers with which his Creator has endowed him, and taste the ennobling pleasures of the intellect and the imagination. He can cherish that love of books which a famous man declared he would not lose 'for all the riches of the Indies.' He can converse with the great of other times and of the present —of other lands and of his own—the thinkers, whose solitary musings have been fruitful in blessings to their kind; the orators, whose words still vibrate through the heart from the printed page, as when, from living lips, they thrilled the senate or the multitude; the mighty poets

> Who have made us heirs
> Of truth and pure delight in deathless lays.

In such an institute as this the artisan may learn the real greatness which he may attain, though worldly rank and riches be denied him. He may learn that the conscientious workman, who does his duty and cultivates his moral and intellectual powers, may enjoy as true a happiness and as high a self-respect as any human being. In the language of old religion, labour was consecrated; and to the Christian heart the pregnant words were spoken, '*laborare est orare*'— to toil faithfully is to offer a silent homage which Heaven will not reject. In this place that emulation which stirs our inventive race to worthy endeavour and to noble deeds may be roused to action. Here, too, will be taught that lesson

which we all most need in Ireland—to bear and forbear; to be tolerant of difference in opinion; and live in harmony and love with those who are opposed to us in political or in religious faith; and to unite for our common interest with those to whom a common nature and a common hope ally us. It is surely consoling that in this spot where party politics and sectarian strife are not allowed to enter, the working man may escape for a time from the storms of faction which too often have disturbed and disgraced our country; and seek, at least in some few hours of well-merited repose—which will be salutary, though it may be passing—a knowledge of the permanently good and the absolutely true.

These are great purposes, which this institute may well subserve. And it will attain them by bringing into action, for the advantage of the working man, that principle of association of which all other classes have learned the value and reaped the profit. Not association for any evil end, with any legal sanction to restrain the liberty or interfere with the rights of others; but that association which gives heart to the desponding and strengthens the feeble, and achieves for all what each singly would be mad to hope for. That principle of association is yours which the merchant and the speculator, the artist and the man of science, the champions of morality and the propagators of religion, have all found so useful and so prevailing; and why should the artisan be denied its protecting influence? He needs it more than almost any other, and it will avail him for the greatest good. And we ought never to forget that, in earlier times, when the foundations of our existing society were laid, this principle was the guide and the salvation of those communities of Continental Europe which began the battle against the system of feudalism, and planted the standard of our modern liberty.

The workers in steel, and in iron, and in gold, of those

noble free cities of the middle age which flung up their ramparts against the oppression of the princes and barons, who found no check amongst the poor serfs of the plains, knew well the value of this principle, and in their union, and combination, and harmonious action, were the appointed heralds of that better time which has seen the nations blessed with free institutions, representative government, and diffused intelligence. In our changed circumstances, and according to the exigencies of our actual state, the practical application of that principle, for honest ends, is as needful, and will be as beneficial now as ever; and this evening will demonstrate that you know how to esteem and to use it.

I again congratulate you, in all sincerity, on the work you have done and the work you have undertaken. Continue to cultivate your understanding, to cultivate the amenities which make our life delightful, and the charity which is sanctified by our religion; and in the years which are to come may you ever look back with increasing pride and pleasure to the day when you dedicated this beautiful hall to knowledge and industry.

A SPEECH DELIVERED AT A MEETING HELD IN DUBLIN, ON JUNE 13, 1853, TO PETITION PARLIAMENT AGAINST THE NUNNERY BILL.

INTRODUCTORY NOTE.

Of the many attempts which have been made from time to time to induce Parliament to authorise the official inspection of convents, the most noteworthy occurred in 1853, when a Bill was introduced by Mr. Chambers, entitled, 'A Bill to facilitate the recovery of personal liberty in certain cases.' There was sufficient likelihood of its becoming law to call for a public protest against it from the Catholics of Ireland, at a meeting assembled for the purpose at the Rotunda in Dublin on June 13. The chair was occupied by Sir Thomas Esmonde, Bart. The Honourable Edward Bellew proposed the first resolution—'That we, the Catholics of Ireland, feel it our duty to testify our sense of the inestimable benefits which all classes of society derive from the religious ladies who have devoted themselves to the worship of God and the service of their fellow-creatures in the convents of the United Kingdom.'

Mr. O'Hagan seconded the resolution.

SPEECH.

I address this great assembly with mingled feelings of pride and sadness. I lament that, after the lapse of a quarter of a century since our emancipation was achieved, the Catholics of Ireland are obliged again to meet for the protection of their religious institutions and the assertion of the rudimental principles of religious liberty. But I am proud to know that, in this matter at least, we are united.

We have had too many social and political and personal controversies, placing us in painful hostility to each other. The aggression which threatens the inmates of our convents has bound us together in one compact and unbroken phalanx, with a single sentiment, a single purpose, and a single will.

With many others, whose habit it is not to attend public meetings, I have held it a sacred duty to take part in this magnificent expression of Catholic opinion, because I believe that we should be wanting in all self-respect, in all manliness, and in all gratitude, if we did not resist the passing of this Bill by every means recognised by the constitution and warranted by the law. We should want all manly self-respect if we did not resist it, for it insults us, every man of us, by imputing to us all a base abandonment of duty. If it be necessary, we have allowed our nearest and our dearest relatives to pine in forced incarceration without remonstrance. We have seen them enduring a living death within the cloister, and been deaf to their prayers for liberty. If there be the colour of necessity for such a measure, our sisters and our daughters must have been driven into our convents and kept within them, not by the force of religious feeling—not by the power of conscience and of principle—not by the binding strength of vows voluntarily taken and voluntarily kept, with which no human law has right to interfere—but by most cruel and lawless coercion. And is this so, indeed? Are we men with human hearts? Are we Christians with any tincture of religious sentiment? Are we citizens with any appreciation of the value of freedom? And have we borne these things, and borne them knowingly? For we must have known of their existence if they do exist; and the foul imputation is inevitable, that we have been unworthily consenting to the misery and oppression of those whom the

common instincts of our humanity should have compelled us to protect. I am here, and you are here, to repel such an imputation as an impertinence and an insult, and tell the world that the Catholic ladies of this kingdom need no Protestant defenders against imaginary wrongs, which, if they were real, would have roused to vehement resistance every Catholic father and brother in the land. But this is not the only motive for our assembling; we have a purer and a holier. We are here to help those who cannot help themselves. The threatened invasion of their sacred privacy has created alarm among the inmates of all the convents in Ireland, and we are bound to shield them according to our power. We feel towards them the deepest respect and the liveliest gratitude. They have left the enjoyments and ambitions of the world, not to sleep away their lives in indolent seclusion, but to dedicate them in unceasing labours to God and to humanity. Their generous self-sacrifice and absolute self-negation, almost alone in these latter times, perpetuate the heroism of early Christendom, and redeem the dull materialism which fills the earth. They toil for heaven, but also for their fellow-creatures. They raise up whole communities to knowledge and to virtue, educating the poor, and purifying their moral nature by devoted efforts, for the mere love of God, and with no hope of earthly recompense. All suffering commands their service. No loathsomeness of disease repels them. No terror of death drives them from the expiring sinner's bed. And it is attempted now to subject the abodes of these gentle servants of the Most High, whose innocence and purity

> Create an awe
> About them, as a guard angelic placed,

to the rude intrusion of official men. Surely we are bound to raise our voice and preserve them from what they one and

all deprecate as an intolerable wrong. If our personal interests are assailed we are prompt to defend them. If our political franchises are abridged we are loud in protest. And shall we not, if we have any of the spirit of manhood, if we retain any remnant of that generosity which was once characteristic of the Irish heart—shall we not aid those to whom we are bound by faith and kindred to escape an evil from which they shrink with horror? Surely we shall aid them, and we shall aid them most efficiently by bearing our earnest and united testimony against this Bill, as utterly unnecessary, impolitic, and unjust. With one heart and one voice you have borne that testimony, and I stand here to maintain it by my own knowledge and my own deep conviction. Some of those who are most precious to me in all the world dwell in the convents of Ireland; and I have not hesitated to commit my children to their keeping. I have known the condition and the management of many of our convents, personally and professionally, for years, and I aver with a sincerity and solemnity which would be none the greater if I spoke under the sanction of an oath, that in my judgment there is no coercion, no restraint, no interference with individual liberty in any one of them which would give a colour of justification to this Bill. And further, I declare that not only is there no proof or evidence of any such thing, but that in Ireland, at least, there has scarcely been at any time an imputation or insinuation of its existence. I claim for myself some capacity to be a witness in this matter. Those who know me will not doubt that I mean to speak the truth, and I deny that there is any shadow of pretence for such a measure in fact, experience, or necessity.

The law cannot interfere with the free action of the human soul. Pain there may be in Catholic families when one in whom the proudest hopes have been centered and on whom the fondest affections have been lavished enters

religion. There is a natural sorrow, when the place of the loved one is vacant, and her smile has ceased to fill the house with sunshine, and the hearth is darkened because she sits by it no more. Full faith in our Divine religion, and humble submission to the will of Heaven, are sometimes needful to reconcile the father or the brother to a separation from her he may have cherished most. But what has law to do with this? Whilst the convent is entered voluntarily, and voluntarily inhabited, it would be the foulest tyranny to forbid the exercise of the will of an intelligent and immortal being seeking her highest happiness in union with her God. This Bill does not indeed openly attempt to establish such a tyranny, but its covert purpose and possible effect would be to check, vexatiously and unjustly, the spread of the conventual system, and do indirectly what directly no man would venture to propose. It is full of error and full of mischief. It is false in its title, false in its preamble, false in its pretences, false in the facts which it assumes. It professes to be a Bill in favour of 'personal liberty'; it declares itself 'A Bill to facilitate the recovery of personal liberty in certain cases.' Personal liberty! Truly spoke the victim of revolutionary fury: 'O Liberty, what crimes are perpetrated in thy name!' What mockery is this! What perversion of human language! The real object is to abridge the freedom of a class of the subjects of the realm, in a matter of the deepest moment, by exceptional legislation of the worst and most unwarrantable kind.

The right of every man and woman in this empire to have the domestic hearth held sacred is one of the boasted glories of British law. We have continually founded upon our secure possession of it a self-complacent assertion of superiority over our neighbours of the Continent. It is inherited from those distant days when the broad and

strong foundations of our constitution were laid by brave warriors, and sage jurists, and holy prelates, who, Catholics though they were, conquered for all time those essential privileges which have enabled us to build up the fabric of our modern freedom. It has been our pride that we fear no despotic interference with the privacy of our homes. Our statesmen have proclaimed that the poor man's cottage is his castle, sacred from all intrusion as a consecrated temple, into which, though the rain and the storm may enter, the king may not. But this immunity, which the meanest hind in England may claim as confidently and enjoy as proudly as the greatest peer, is to be denied to ladies who voluntarily associate together for the highest and holiest purposes in private houses purchased and maintained by their own private fortunes. And for this abrogation of ancient right and social freedom, what is the pretence? Thus runs the preamble, which is, if possible, more false than the title of the Bill:—

> Whereas difficulties have been found to exist in applying for and obtaining the writ of *Habeas Corpus* in certain cases in which females are supposed to be subject to restraint, and no sufficient opportunities are afforded for ascertaining whether or not they are so subject improperly, and whether or not against the will or without the knowledge of their parents, guardians, or nearest relatives; and it is expedient that such difficulties should be removed.

It is 'supposed' that restraint exists; 'difficulties' are found in applying for the writ of *Habeas Corpus*. The supposition is unfounded, the difficulties are imaginary. But it is very notable that the authors of this Bill have not even ventured positively to assert the fact of coercion; they have shrunk from asserting it because, not only do they lack all evidence to sustain such an assertion, but all evidence is directly the other way. And are the most precious privileges

of individuals and of classes to be annihilated on a mere imagination and suggestion, without one particle of proof? Are our most sacred rights to be 'supposed' and insinuated away? Can legislation based on such a supposition receive the support of honest representatives, or command the respect of an intelligent people? And, especially, is legislation so novel, so startling, so exceptional, as this Bill proposes, to be admitted on such grounds as these? What does it propose? A commissioner, a permanent commissioner, a paid commissioner, a commissioner whose permanence and whose pay must depend on his finding work to do. A commissioner to be appointed by those who hold their own offices on the condition of their Protestantism, is to be permitted, at his own caprice, acting on his absolute discretion, to demand admittance, when he may please, and as he may please, to any Catholic convent in the empire. Here is the clause by which this high functionary is to be allowed to trample on the old Common Law of England, and violate the sanctity of the private dwelling. The Bill proposes to enact:—

That in any case in which any one of the said Commissioners shall have reasonable ground to suppose that any female is detained in any house or building against her will, he is hereby authorised and required, in company with a justice of the peace of the county in which the said house or building shall be situate (who is hereby required when called upon to accompany the said Commissioner), to visit the said house or building, and if necessary to make a forcible entry into the same, and to examine every part thereof, and to ask for and obtain from the occupier or occupiers of such house or building a list of all persons then resident therein, or who slept there on any night within seven days next preceding such visit, and to see all and every the inmates and to examine each, either apart and separate from all others, or otherwise, and ascertain whether any female is detained in the said house or building against her will; and the said Commissioner is hereby authorised to make

complaint on behalf of any such female as last aforesaid, and to proceed by writ of *Habeas Corpus*, or otherwise according to law, to obtain the liberation of such female, provided always that such entry shall be made between the hours of eight o'clock in the morning and eight o'clock in the evening.

Again supposition! again imagination! again a supreme indifference to proof and certainty! The commonest precautions which the law prescribes to protect the humblest from injustice and vexation are wholly set at naught, when the dealing is to be with gentlewomen—educated, refined, and sensitive as they are innocent—who have united to spend their lives in holy peace, and shrink from contact with the rudeness of the world. If a search for stolen goods is necessary, an affidavit must be made to justify entrance into the poorest hovel; but the Commissioner may range through all the convents of Ireland without offering reason or justification for his acts. Exercising his anomalous and most monstrous power, he may demand admittance to any one of them, and, if it be not yielded at once, he may compel it forcibly. He may break open the doors, enter when and where he pleases, summon before him all the inhabitants of the house, young and old, professed and novices, pupils and teachers, and subject each of them apart from all the rest, in the absence of friends and relatives, and deprived of all human protection, to an inquiry to which no man, having a man's heart in his bosom, would allow his wife or daughter to submit. But the nuns are not to be without their proper guardians. The Commissioner is directed to summon a magistrate of the neighbourhood, who shall accompany him in his inspection. I have respect for the magisterial office, and for very many men who hold it; but magistrates are like other human beings—they are good and bad, just and unjust, wise and foolish, cultivated and vulgar, virtuous

and basely depraved. And can we not easily imagine that the privilege which this Bill would confer upon them all, without a test or the possibility of a test, of fitness for its exercise, might be made, and would be made, the instrument for the indulgence of prurient curiosity or the satisfaction of sectarian bitterness, or the justification of the slanders of bigotry and the violence of fanaticism? I would not weary you by further observations on the details of this monstrous Bill, but I shall read to you another clause of it. Law must have sanction; they who disobey its mandates must be punished; and accordingly provision is made for doing justice on those who may offend the majesty of the new inquisitors; thus says the Bill:—

> Any person obstructing any one of such Commissioners in the execution of his duty, or wilfully concealing from him any of the inmates, or apartments, or premises of the house or building so visited as aforesaid, or knowingly misrepresenting any facts or circumstances with a view to mislead him or otherwise hindering or impeding him, shall be deemed guilty of a misdemeanour, and, on conviction thereof, shall be liable to be fined any sum not exceeding fifty pounds, or to be imprisoned, with or without hard labour, for any period not exceeding one year.

That is to say, not only shall wilful concealment of inmate or apartment, or knowing misrepresentation of facts or circumstances, subject the offenders to punishment, but words most general and comprehensive and dangerous are introduced, enabling the Commissioner to institute a prosecution if he be 'otherwise hindered or impeded.' He is first to 'suppose' a justification for his own intrusion into the convent, and when he enters he is to determine whether he be received with all the deference, and obeyed with all the alacrity, which he may deem desirable, and if he is not he may prosecute any one of the ladies who may incur his

displeasure—the abbess, the prioress, the sister, or the novice—drag her from the enclosure, from which she had hoped never to pass save to her last resting-place on earth, parade her before a court of justice, and, if he can obtain a conviction, subject her to a fine of fifty pounds, or a year's imprisonment with or without hard labour in a felon's gaol. Shall I argue further? Shall I say that the impolicy of such a measure would almost exceed its injustice, and that no statesman who knows anything of our country and cares in the least for her peace and progress can possibly support it? And for you Catholics of Ireland, is it needful that I should add a word to stir you to all legal resistance to so vile a Bill? It is said in England that the Irish Catholics are supposed to approve of it. Our requisition and our meeting answer the calumny: we oppose it with universal and unanimous indignation; the peer, the merchant, the lawyer, the physician, all classes and orders of men have united to condemn it, and we have made this assembly the exclusive expression of the sentiments of the Catholic laity of Ireland, because we are resolved that it should appear to be, as it is, the spontaneous expression of their honest protest against a public wrong. No prelate or priest has originated or organised this vast assembly. Those whom we venerate as God's ministers are with us, of course in spirit, and in purpose, but we desire the empire to understand that, in a matter touching ourselves most nearly, we speak for ourselves, our own free and deliberate and most earnest judgment. We resist this Bill, we invoke the aid of every Protestant friend of civil and religious liberty in our resistance to it, because it is slanderous, because it is partial, because it aims to tarnish our honour and to assail our freedom.

The following petition to Parliament, which had been drawn up by Mr. O'Hagan, was unanimously agreed upon at the meeting :—

To the Knights, Burgesses, and Citizens in the Commons House of Parliament assembled.

The petition of the Catholics of Ireland in aggregate meeting assembled, Showeth that we regard with the strongest feelings of alarm and disapproval a bill lately introduced into your honourable house, which, although entitled 'A Bill to facilitate the Recovery of Personal Liberty in certain cases,' is really designed to interfere with and warrant vexatious and inqusitorial inspection of conventual establishments.

That we deem the exceptional legislation against religious houses that this bill attempts, to be unconstitutional in its nature, an infringement at once of civil rights and of religious liberty, insulting to the entire Catholic community of the empire, and calculated to produce the gravest social mischief.

That the invasion of the privacy of conventual life, which would be authorised if this bill should pass into a law, is uncalled for by a single member of the religious body which it would almost exclusively affect, and, in our judgment, wholly unjustified by any necessity or any colour of evidence or reason.

That owing our deepest gratitude and reverence to those devoted ladies who have dedicated their lives to the duties of religion and the good of their fellow-creatures, for their inestimable services to education and humanity, we feel ourselves bound by every sentiment of manhood and every principle of charity to resist on their behalf, so far as we are enabled to resist it legally and constitutionally, the introduction of a system which would do them intolerable wrong.

That we respectfully claim some consideration for our opinion on the matter, as we, the Catholic people of Ireland, have the best opportunities of understanding the condition and the wants of our own religious establishments, and the greatest interest in their proper management, and in the comfort, happiness, and freedom of their inmates, to whom very many of us are united by the ties of kindred and affection; and we do earnestly implore your honourable House to reject this most unnecessary, most mischievous, and most obnoxious bill.

And your petitioners, &c.

On the order of the day for the second reading of the Nunnery Bill it was opposed by the Government, and lost by 207 to 178.

A SPEECH DELIVERED AT A MEETING OF THE CATHOLICS OF DUBLIN, ASSEMBLED IN THE DOMINICAN CHURCH, DENMARK STREET, ON DECEMBER 3, 1853, *FOR THE PURPOSE OF SOLICITING AID FOR THE ERECTION OF A NEW CHURCH.*

INTRODUCTORY NOTE.

In the year 1745 the Catholics of Dublin were first permitted to celebrate their religious services openly in the few miserable churches which then existed in the city. These wretched buildings—often with thatched roofs—continued, through sad necessity, to be the only places of Catholic worship in the metropolis until some way on in the present century. The Church of the Carmelites in Clarendon Street was the first that was constructed with some higher purpose in view than the mere sheltering of the congregation; it was for a long time the principal church in Dublin. After Catholic emancipation the movement, which was growing in England, for the revival of Christian architecture, spread into Ireland, and many noble churches sprang up throughout the country.

In the year 1853 the Fathers of the Dominican Order in Dublin began the erection of a church in the Decorated Gothic style, and on a grander scale than usual. On December 3 a great meeting of the Catholics of Dublin was held in the old Dominican Church in Denmark Street for the purpose of promoting this undertaking.

SPEECH.

Mr. O'Hagan moved the following resolution :—

That the efforts made by the pious Fathers of the Dominican community to erect a spacious and beautiful temple for Divine worship, entitled them amply to the support of the Catholics of this metropolis.

He said : This should be a meeting for work and not for words. It is our business to set an example, and give an impulse to the Catholic people, and little argument ought to be needed to recommend to their support the noble object for which we are assembled. In every way it is one to attract their warm sympathy and invite their generous co-operation.

Another church is manifestly required by the vast congregation which has grown under the guardianship of the devoted priests who demand our help, not for themselves, but for the poor to whom they minister. They seek no worldly wealth or honour— they claim no worldly recompense for the labour to which they have dedicated their lives, in seclusion and self-denial, for God's honour and the service of their fellow-men—they are content with the grateful affection of the humble Christians whom they lead in the ways of virtue, and with the consciousness that they spend themselves on their great Master's work. Surely, when they honour us by asking that we shall unite with them in their new effort to advance our common faith, and when they stint themselves even of the poor pittance

which sustains them to promote that worthy effort, we cannot be deaf to their appeal, and refuse to give a little out of our own superfluity. Their undertaking is not a common one. No undertaking of the kind can be regarded with indifference by those who 'love the beauty of God's house!' but, in this case, something more is sought to be accomplished than the erection of an ordinary parochial church. In the spirit of those mediæval monks to whose piety and energy so many of the splendid churches which adorn Europe owe their existence—the Dominican Fathers, trusting in the blessing of Providence and the help of Christian men, have resolved on the construction of a sacred edifice which in its size and architectural beauty shall be worthy of the capital of Ireland; and the performance of such a task is specially in keeping with the traditions of their illustrious Order, to which art is so much indebted for its preservation and advancement. For six hundred years the Friars Preachers have been, from time to time, most eminent in the prosecution of those intellectual efforts which adorn the life of man and exalt our humanity itself; they set themselves to breast the torrent with which barbarous hordes were sweeping civilisation from the world, and they succeeded in maintaining art when it seemed about to be extinguished. They have produced not merely wise theologians and profound thinkers, but also the greatest masters in the science of their times, engineers, projectors of the mightiest works, architects who, in their wonderful creations, dwarf almost into insignificance the productions of later days; and they have produced sculptors and painters too, in long renowned array, whose 'memories are consigned to immortal fame.'

Shall we not gladly be fellow-workers with those who represent these renowned men, and represent them worthily? Shall we listen with cold hearts and closed hands to the

call which is made upon us by the brethren of Angelico and Aquinas?

And for us, Irish Catholics, have not the Dominicans nearer and dearer claims on our regard than those which they derive from the intellectual achievements and the pious toils which have made them famous throughout Christendom? They first came amongst us in 1224, and through all the chances and changes of our melancholy history they have continued in unbroken succession ever since, instructing the ignorant, consoling the afflicted, lavish in self-sacrifice, fearless of persecution, and prompt to meet danger or death in the service of the sanctuary. Their earliest endeavours in Ireland were for the establishment of seminaries; they aided in the foundation of our first university. In the seventeenth century they anticipated the project of the statesmen of our times by designing the erection of four provincial colleges at Limerick, Cashel, Coleraine, and Athenry. They have never been wanting when, by any aid of theirs, the Christian education of the people could be advanced; and at this hour their schools are numerous, and some of them are taking a noble part in the industrial movement which is the present hope of Ireland. And for religion, what did they not accomplish in the dark penal times? When our temples were razed to the earth and our august solemnities could no more be celebrated—when the secular priest was denied education, nay, existence in the land, and high-handed persecution struck down the organisation of our ancient Church, and gloried in the fond belief that its immortal life had been extinguished for ever, the Dominicans, and others of like temper and training, came forth from their shattered cloisters, and mingled amongst the poor with the calm courage of the early Christian teachers. They had always been children of poverty, and hostile laws could not

depress them further—they had cultivated the spirit of self-negation and contempt of worldly goods, and they were fearless of any worldly injury—they had sought to lay up treasures in heaven, and they defied the malice and the cruelty of earthly power.

> 'Unmoved,
> Unshaken, unseduced, unterrified,
> Their loyalty they kept, their love, their zeal.'

They gave bishops to the Irish Church when eminence was danger, and to be a prelate was to be a martyr. Nearly one hundred of them have held the episcopal office in Ireland; eighteen of them have been archbishops, and nine have sat in the chair of Patrick, in his own primatial See. Of the six hundred Dominicans who continued to exist in Cromwell's time exile and martyrdom took away two-thirds, within a very few years, but the Order never was destroyed, and it failed not to give new testimonies, whenever they were needed, of heroic virtue and undaunted courage.

And now, when better times have come—when we stand in an emancipated country, equal with our fellow-men before the law, and able to exercise our religion freely—when cathedrals rise around us in their beauty and their grandeur, and our ancient faith commands again the services of art, and shows itself in its pristine majesty—shall we forget those by whom that faith was maintained in the evil times that are gone? Shall we refuse to help them to advance in the day of our prosperity, who never failed us in the day of our oppression? Shall we relegate them still to filthy alleys, and narrow thoroughfares; shall we not concede to them a poor recognition of their vast services by helping them to extend the field of their usefulness, and increase the honour of the religion which they love? We

cannot deny them this, if we have amongst us any generosity or justice. Limerick has given a noble church to the Dominican Fathers ; Cork, also, has given them a noble church ; and the Catholics of Dublin will surely better the example, for they have amongst them the most ancient foundation of the Order, and they have derived the greatest benefit from its unvarying labours. The Dublin Dominicans have moralised the district in which they live; they have expanded the influences of our religion, and made it operate in the repression of vice, and the multiplication of all good works amongst the tens of thousands whom their ministry affects.

Indeed, I might urge that, apart from all other considerations, it is your plainest interest to extend the sphere of that admirable ministry. I know something of Ireland, and I am persuaded that there is, at this moment, less of crime —whether of violence or of fraud—amongst her inhabitants than in any other country with which I am acquainted. Crime there has been often, and sometimes of a terrible description, but her present state is marvellously free from it, all things considered; and the metropolis is, in my judgment, eminently worthy of the praise which, in this respect, may justly be applied to the whole of the island. I entirely adopt the view of a great living statesman,[1] expressed a very little time ago, that life and property are more secure in Ireland than in more favoured districts of the empire; and, being so, they are certainly as secure as in any nation of the world.

To the maintenance of such a state of things, the extension of such influences as have largely produced the peace and order of this district of the metropolis is most important. The magistrate, the soldier, the officer of police, are all, in their departments, essential to suppress crime and

[1] Lord Palmerston.

preserve social order; but to make the suppression of the one and the preservation of the other effectual and permanent you must affect the consciences of men and amend their moral being; and what has been undoubtedly accomplished in that way, within this district, cannot be praised too much or too cordially promoted by every imaginable means. In a Catholic community the crowded confessional and the thronged altar-rail are at once the best proofs and the surest guarantees of the absence of serious criminality.

But not only on social grounds, not only out of gratitude to the Dominican Fathers, and regard for their illustrious history, ought it to be our care and our pride to help forward this glorious work; it behoves us also, as dutiful Catholics and lovers of our country, to employ every means recommended by the wisdom, and in accordance with the discipline of the Church, for keeping alive and increasing faith and devotion among our people in their new position. We are advancing in national prosperity. Everywhere in Ireland we see distant localities made accessible; we see the soil increased in its productiveness by the discoveries of modern science, and improvement in modes of industry; we see property made easily exchangeable from hand to hand; we see that a great career of material progress is opening before us, and we ought to be very vigilant lest that career of material progress should be accompanied by spiritual retrogression. There is great danger of this. The history of the world is fruitful in mournful instances of the falling away, under such circumstances, of individuals and of empires.

> These by Fortune's favours were undone,
> And bore the wind, but could not bear the sun.

It is the wise way of the Catholic Church, resulting from her

profound knowledge of the workings of the human heart and the wants of man, to appeal not only to the reason of her children, in order to keep them right in their relations with the unseen world, but to every faculty of soul and sense; and to this end she avails herself of the marvellous aids of art.

An opportunity is afforded us to-day of co-operating with her—and what stronger inducement for action is required? —by helping the Dominican Fathers to erect in our city a beautiful temple, which, in its whole design, full of mystical meaning, in its sacred paintings and sculptures, will exercise a silent religious influence upon the imaginations and the wills of our people.

A SPEECH DELIVERED ON OCCASION OF THE UNVEILING OF A STATUE OF THE POET MOORE IN COLLEGE GREEN, DUBLIN, ON OCTOBER 14, 1857.

INTRODUCTORY NOTE.

Previous to the year 1857 there was no statue of an Irishman adorning the streets of Dublin, although there were two or three of Englishmen. On October 14 in that year a bronze statue of the poet Moore, raised by national contribution, was publicly unveiled in College Green by the Earl of Charlemont.

The Earl of Carlisle (then Lord-Lieutenant) and some other distinguished men took part in the ceremony.

Mr. O'Hagan was entrusted with the duty of handing over the statue to the Corporation and people of Dublin, and in so doing he spoke as follows.

SPEECH.

The duty of presenting the statue which has just been unveiled to the Lord Mayor and Corporation, and, through them, to the citizens of Dublin, has been cast upon me by the distinguished persons who constitute the committee. And though I feel that there are many round me who would more fitly occupy a place so honourable, I rejoice to assist in any way at the national solemnity which makes this day memorable in the annals of our ancient and renowned metropolis. The committee and their noble president, who holds his proper place at the head of a community to which his name is dear and venerable, in inaugurating the memorial of the poet of our country, have completed the undertaking which was to them a labour of love, and they now commit to the Municipality of Dublin the guardianship of that enduring monument of a nation's grateful homage to one of its worthiest sons. The trust, my Lord Mayor, you will not repudiate. It concerns the honour of Moore—it concerns, also, the honour of Ireland; and you will not accept it the less cheerfully because, for the first time this day, the statue of an Irishman is seen in the streets of the Irish capital.

For the first time, we relieve ourselves from the disgrace of neglecting the great of our own blood and lineage, and making to the stranger, who passes through our city, the false confession that we have had no illustrious men worthy of public reverence. Everywhere throughout Europe, in the widest empire and in the smallest principality, com-

munities rejoice to challenge, in their most public places, for the citizens who have made them distinguished in thought or action—in arts or arms—the notice and the admiration of the world. Everywhere the children of the soil, who have given it happiness or glory, are the especial objects of national regard. And this is rightly ordered, and in no narrow or exclusive spirit; for as, in the economy of Providence, each man acting well his part in his own appointed sphere will best promote the general good of the commonwealth, the country which most wisely cares for its own dignity and interest will most efficiently advance the well-being of mankind. We may 'girdle the world with our sympathies,' but they should cling most fondly around our hearths and homes.

It is the sorrow and the shame of Ireland—proverbially *incuriosa suorum*—that she has been heretofore too much in this respect an exception amongst the civilised kingdoms of the earth. And the sorrow and the shame have not been less because she has been the parent of many famous men—of thinkers, and poets, and patriots, and warriors, and statesmen—whose memory should be to her a precious heritage.

It is time that this reproach should be taken from us. It has been a sad evidence of our deficiency in self-dependence and self-respect, and of the accursed influence of those intestine broils which, to our universal injury, have made us jealous of each other and distrustful of each other, and forgetful that, though honest difference in action and manly assertion of conflicting views on questions of public moment may prevail amongst us, we have a common country, in whose honour we have a common interest, and ought to have a common pride:

> En, quo discordia cives
> Produxit miseros!

But the celebration which has gathered this great assembly is of happy auspice, for it indicates the growth of a wiser and healthier public sentiment, and proves that we can combine, at least, to cherish the memory of genius which was all our own—racy of the soil and instinct with the spirit of our own people. The genius of Thomas Moore was surely such. Its fair creations have been the delight of many countries, but they are peculiarly the property of the land that bore him, and on that land is cast the duty of proving its special value for the great possession. You have heard to-day from those who have addressed you enough to prove that men may differ as to his character and conduct. If we were here to criticise, some of us—and I should be of the number—would find matter to disapprove in his writings, his opinions, and his life. But when has earthly greatness been undeformed by error, and are we to deny it reverence because it is not without a blemish to remind us of the imperfection of our mortal state? Time, which blots from men's recollection the occasional and the fleeting in human deeds, establishes, with a perpetual consecration, all that merits to endure. And, regarding the permanent substance of his public life and work, coming generations will for ever recognise in Moore a great Irishman whose Irish heart and intellect prompted and achieved great things for Ireland.

He had a high mission, and he fulfilled it bravely. When he was born, near the spot on which we stand, and whilst he gathered knowledge in the old University which towers above us, we were yet without a poet to interpret to mankind the spirit and the character of Ireland—her genial fancy and her earnest feeling—her sorrows, her struggles, and her hopes. The dear old music of our island—so sweet, so various, so marvellously expressing in its deep pathos and its bounding mirthfulness the changeful phases of the Irish nature—had not been 'married to immortal

verse.' Much of it was passing to forgetfulness, for fit words had not been found to give wide acceptance to the airs which still lived in the traditions of the people, sounding by the cottage fireside, or from the strings of the wandering harper. Moore did for us what we needed and what no man had essayed before him. He gathered up the fragments of our ancient melodies, associated them with lyrics such as had not been heard in later times, and made them 'a joy for ever' to his country and the world. His songs have resounded wherever the English tongue is spoken by the mixed races who utter it throughout the earth. They are resounding still beneath Eastern suns, and amidst Canadian snows—in the deep forests of the West and at the far Antipodes, where young empires begin their conquering progress. And the same sweet strains, coupled with the same old music, but clothed in the dialects of other lands, have been heard throughout Christendom and beyond it—have been sung by the Frenchman and the Russian, the Persian and the Pole. And thus have the name, and the history, and the genius of our country been made familiar to distant nations.

Fitly, therefore, even without reference to his achievements in other fields of intellectual action—for in this place and on this occasion I choose to regard him as the poet of Ireland—fitly do we honour him who has so honoured us; and we can so honour him, even though some weaknesses of his bright career have been exposed rudely and blazoned far, for if he had faults he had also rare virtues. His love of Ireland ceased only with his being, and often found bold utterance, according to his conception of the truth, at the risk and with the consequence of evil to his fortune. He was faithful to all the sacred obligations and all the sweet charities of domestic life. He was the idol of his household. He clung to his humble parents with reverential affection in his day of

greatness, as when he prayed at his mother's knee, and kept himself poor that his family might have comfort. Temptations beset him on his course and tried him sorely; but he was true and brave as he was gentle, and of a manly spirit, which never brooked dishonour or abased itself for gain.

All these things are remembered this day by Ireland, and she has not denied to him the prayer of his own most beautiful appeal. She does *not* 'blame the bard' who has done her such noble service. He has kept his promise, and fulfilled his prophecy—he *has* made her name to live in songs which are immortal—the stranger *has* 'heard her lament on his plains'—'the sigh of her harp' *has* 'been sent o'er the deep,' and she is grateful for his labours as she is proud of his fame. Therefore it is that we stand here to-day—men of every party, and creed, and condition in the land—forgetting the small strifes which fret us and the dissensions which hold us unhappily asunder, to strive, as Irishmen, with generous emulation, in guarding his memory as a glory to us all. And Ireland is well represented here, her old historic names, her aristocracy and her middle classes, and the mass of her community. A Charlemont, worthy of his sire, is supported by a Geraldine of that great race, '*Hibernis ipsis Hiberniores*,' whose love of country is their old inheritance. The head of the bar of Ireland unites with her Surgeon-General, Moore's early and faithful friend, to speak for her learned professions. Merchants of the highest influence and position offer their tribute to the child of a Dublin trader, who, in his brightest noon of fame and his highest pride of place, was never ashamed of the class from which he sprang. The true hearts of our kindly people ring forth their plaudits for the poet, whose verses are to them dear and familiar as household words; and to consummate the occasion, the

representative of Majesty graces it with his presence; and by his high faculties and generous nature Moore is not less appreciated because he was an Irishman.

In such an assembly, my Lord Mayor, it is my high privilege to present to the Municipality of Dublin this statue—the creation of an Irish artist,[1] who by his works has honoured the name he bears, and raised the reputation of his country. And I present it with the hope and prayer that the feeling which pervades us here may outlive the passing hour and be fruitful of great results—that it may originate other celebrations such as this of other men whose names we must never allow to perish—that it may make us, without pausing in our material and industrial progress, zealous to preserve all that is peculiar to us in literature and art—to maintain the venerable monuments which connect us with distant ages and vanished races—to cherish those historic recollections which are, indeed, 'the immortal life of an historical people,' and by the earnest culture of a true national spirit and a just national pride, to approve ourselves jealous of the honour, devoted to the interests, and faithful to the fortunes of our native land.

[1] Christopher Moore.

A SPEECH DELIVERED AT THE DISTRIBUTION OF PRIZES IN THE BELFAST WORKMEN'S EXHIBITION, ON MAY 28, 1870.

INTRODUCTORY NOTE.

In the spring of the year 1870 an Exhibition was opened in the Ulster Hall, Belfast, of the work of the artisan and industrial classes of that town and of the North of Ireland. On May 28 Mr. O'Hagan (then Lord Chancellor), at the invitation of the Executive Committee, distributed the prizes to the successful competitors, and delivered the following address.

Both the Conservative and Liberal newspapers, in commenting on the proceedings, took occasion to refer to the happy change in the relations of parties in Belfast, as evidenced by the enthusiastic reception accorded to Mr. O'Hagan by persons of all religious denominations and of the most opposite political views.

SPEECH.

Mr. Mayor, my Lord, Ladies, and Gentlemen,—Perhaps I should offer an apology to this great assembly for omitting to answer formally in writing the address which has been read to me. I received a copy of it, and at first I was disposed to think that I should so answer it in deference to those who had favoured me with so signal a distinction; but then it seemed to me that, coming amongst my old friends in the good old town in which I was born, it might

please them quite as well, if I should adopt a course less stiff, and trust to the impulse of the hour for the free and spontaneous utterance of the emotions of my heart; and so in simple words I thank you for the more than cordial reception you have given me. When I arrived last night I in no way anticipated that I should pass at once from the gloom of the railway station to the fairy scene so full of light and life which delighted me in this noble hall, and still less did I anticipate that I should be greeted by such an outburst of enthusiasm, and that I should have to thank you for its even warmer repetition now.

I do not like to be egotistical; but in this place and in this presence old memories throng upon my mind, and stir long-buried feelings. I recall the time when, in my three-and-twentieth year, I left Belfast to prosecute my profession, and fight the battle of life—not without hope and courage, but with a future clouded in obscurity, and not much of worldly wealth or worldly influence to make it bright before me. I recall that early time, and think of all the years that since have come and gone, with the joys and sorrows which chequer human life, and of both I have had my share. And now that I am permitted to be again amongst my own people—when that battle of life has been fought and in some sort won—I trust I may say, with humble thankfulness, that the winning of it has cost no compromise of principle or stain of honour. And I would add, in earnest sincerity, that such success as has waited on me is made far more dear and valuable by the evidences of confidence and affection demonstrated in the welcome which your kindly voices and familiar faces have breathed and beamed on me to-day.

Well, I have said more than I ought to have said, and far more than I dreamt of saying, of myself and my relations with Belfast. But you have borne with me, and

you will forgive me. And now I would add a word or two as to your address and your Exhibition. When I left Ulster in the distant day to which I have referred, Belfast was a modest town, with much intellectual activity and some commercial success, and a history connecting it with the better times of Ireland. But now it has grown into a magnificent city, whose progress has been a marvel to the world. I remember when a single chimney represented that great trade which has poured such prosperity amongst you. Now, the chimneys make a forest. You have an enormous population, and merchant princes abounding not more in wealth than in sleepless energy and untiring enterprise. It seems to me that your own industrial success fairly entitled you to the honour of inaugurating a movement in favour of the working people; and in this Exhibition it has been well begun. Heretofore, as you have truly said in your address, the children of toil have had no meed of praise. In the former great undertakings of this kind, the comparative advance of nations was illustrated, and great capitalists and employers monopolised the place of honour. But that class whose labour is needful to clothe our life with comfort and adorn it with beauty, were left in the shade—their merit unrecognised and their names unknown. It was the very old story—

> 'Sic vos non vobis nidificatis aves;
> Sic vos non vobis vellera fertis oves;
> Sic vos non vobis mellificatis apes;
> Sic vos non vobis fertis aratra boves!'

It is time that we should change all this. It is time that the unseen flowers and the caverned gems of genius which lie hid in the workshops of the world should see the light, and command a grateful recognition. You have done a great and a good work in helping forward that happy consummation, and you have done it, as I conceive, in

the best possible way. The working-men themselves have been the originators and the most effective promoters of the movement. They have been aided, indeed, with affluent generosity by your wealthier citizens; but the affair has been essentially their own; and they have acted for themselves in no spirit of fanatic infidelity, or revolutionary frenzy, or antagonism to the supremacy of law and the settled order of society, such as, unhappily, has found development in other places. They feel that they have enough of credit and of happiness in their own successful industry, and they are not ashamed to adopt the ancient motto '*Laborare est orare*.' Heaven accepts in honest toil a hallowed incense, and its fruits are not less rich and ample because they are consecrated by the tribute of reverential gratitude to the Almighty Being from whom all good things come. Further, I am convinced that great social benefits will arise from the mode in which this Exhibition has been created and conducted to its large success. It has brought together classes of the community which have been heretofore too far apart. The capitalist and the operative, the employer and the employed, have worked together in the most cordial amity; and it is impossible that they should not be animated by stronger sentiments of mutual trust and confidence on that account. They will learn to cherish reciprocal respect, and desire to be helpful to each other; and so promote that healthy consolidation of the body politic which exists when all its parts are in harmonious relations with each other, and all its members fulfil their several functions in their several spheres. As it was in 'the brave days of old'—

> 'When none was for a party,
> When all were for the State;
> When the rich man helped the poor,
> And the poor man loved the great,'

—so should it be in well-ordered communities; and I am convinced that the events of the past months have greatly advanced in this way the true interests alike of rich and poor amongst you.

I may say a few words, in reference to an observation of your excellent Mayor, which has my hearty concurrence. He said that the Exhibition and its accompaniments had tended greatly to heal divisions, and remove asperities amongst the people of Belfast, and unite them as they have too rarely been united. I rejoice at this. It should give joy to all good men. I am the friend of your chief magistrate, though he differs from me widely on questions of the gravest moment; but I am not the less his friend on that account. We have no difficulty in combining for common objects in the spirit of Christian charity and good fellowship whilst we 'agree to differ' in our political and religious views; and there is no sort of reason why Irishmen universally should not learn to act in that tolerant and kindly spirit, knowing that the same dear country —which is their common mother—claims the loving allegiance, and should command the devoted service, of them all. I echo the wise aspirations of my friend, and pray that this Exhibition and the occurrences of this day may promote that union which is essential to Ireland's prosperity and progress, and will be amply adequate to the happy accomplishment of all her reasonable and rightful ends.

I have seen last night and this morning all the treasures which have been accumulated in this admirable building. I shall not attempt to refer to them in detail. I have not time, and, if I had, I possess neither the artistic skill nor the technical vocabulary which might warrant me in attempting criticism. I can only say that I have been gratified and surprised by the proofs which they conclusively afford of the ingenuity, originality, and inventiveness of the

working-men of Ulster; and that in far larger and more pretentious Exhibitions I have seen no such demonstrations of these excellent qualities. Surely, the value of your enterprise needs no better assertion than is thus afforded; for without it those qualities would have been undeveloped, and their possessors deprived of distinction which is so eminently their due. But I must hasten to a close.

I cannot, as I have said, speak of the individual works which have given me so much pleasure, but I should fail in my duty if, on such an occasion as this, I did not congratulate you on the success of the great industries which distinguish Belfast, and in which it can hold its place with any portion of the British Empire. One of those industries has been famous since the Pyramids were founded—the great linen industry; and of that your province at this moment is, not geographically, but effectually, the greatest centre in the world. The exhibitors have shown with what exquisite skill they can prosecute every branch of it through all its stages—from the green fibre and the preparation of the flax up to the snowy cambric and the marvellous damasks of Ardoyne and Lisburn, which are prized through all the palaces of Europe. On another branch of your trade I rejoice to congratulate you. It has grown into existence since I was a boy, and it has filled the earth with its fame. I speak of the construction of machinery, in which I do not think you need dread any competition. In the most distant countries you find your customers—on the steppes of Russia and by the borders of 'Old Nile'; and I believe your excellent machines command a market even in England. Your shipbuilding, too, I am told, flourishes amazingly, and I learn that you are enabled to make profitable contracts with the Government for ironclad vessels. This is highly satisfactory—not because you are in relations with the Treasury as receiving bounty or seeking aid—but

because you are capable of doing work which it is the interest of the State to purchase. It is thus you have advanced and thus you will continue to prosper—not through the patronage of Cabinets or parties, but through your own brave self-reliance and energetic self-assertion. I trust it will ever be so, and, if it be, your prosperity, great as it is, is yet only in its infancy. You have reached that stage of progress at which retrogression is not to be feared, save through your own default.

I am sorry that I have detained you so long, for we have much to do, and little time to do it. I am more sorry that I must leave you so soon ; but I am enabled to be here at all only because this is a legal holiday, and I must return at once to Dublin. But, brief as my stay has been, I shall carry with me pleasant and grateful memories, which will endure as long as I live.

A SPEECH DELIVERED AT THE ANNUAL DINNER IN AID OF THE NEWSPAPER PRESS FUND, GIVEN IN LONDON ON MAY 20, 1876.

INTRODUCTORY NOTE.

On May 20, 1876, the annual dinner in aid of the Newspaper Press Fund, which was instituted in 1864, was given at Willis's Rooms, St. James's. There were 250 guests present, including Lord Houghton (the President), the Lord Mayor, M.P., the Earl of Elgin, the Earl of Dysart, Lord Waveney, Signor Salvini, Lieutenant Cameron, &c. The Lord Chief Justice (Lord Coleridge) was to have taken the chair on the occasion, but he gave notice a day or two before the dinner that, owing to indisposition, he would be unable to attend. At the invitation of Lord Houghton, Lord O'Hagan filled his place. In proposing the toast 'Prosperity to the Newspaper Press Fund' he said:—

SPEECH.

It is now my duty to give the toast of the evening. But before I approach a task which, under the circumstances, is one of some delicacy and difficulty, I must be permitted to throw myself on your indulgence. I am here, on the shortest notice, to take the place of one of the most distinguished of Englishmen, of one who commands, to a large extent, the admiration and confidence of his country; of one who has been equally eminent at the Bar, in the Senate, and on the Bench. In his powerful and polished eloquence we all hoped to delight this evening. I am sure I may say for you, as for myself, that we deeply regret his absence, and the indisposition by which it has been caused. To assume the functions of such a man, on such an occasion, and with such opportunity of preparation as I have had, would be a bold venture for anybody; and I fear, whilst you are listening to his substitute, many of you may be tempted to say of him, with the great historian,

'Eo magis præfulgebat, quod non videbatur.'

However, I had no alternative, when I was urged to come here by my noble friend your President, who was one of the chief founders of your Society, and has watched over it with a parent's fostering care, and with such success as this magnificent meeting conclusively demonstrates. When he communicated to me the unanimous wish of the Committee that I should occupy the Chair, I felt that I ought not to shrink from the duty. I have sincere interest in the

aims of the Society. I appreciate its admirable results, and I would willingly do it service. But if I had had doubt as to my course, it would have been ended when Lord Houghton informed me that a very great number of the friends of the Newspaper Press Fund are countrymen of my own. I had not been aware of the fact, although I had long understood that much of the wit, the wisdom, the energy, and the success which belong to the London journals are derived from Irishmen and Scotchmen. They have found, we all know, some of their best inspiration and highest influence in the *perfervidum ingenium Scotorum.* I use the last word in its large old sense, as comprehending my own people of the Green Isle and the descendants of those whom they sent out, as we have heard, in other days, to settle and to flourish in the fair

'Land of brown heath and shaggy wood.'

I rejoice that so many of my countrymen have seen the value of the Society and give it their support; and I should be ashamed to refuse to help them.

And now that I am here, I feel that there are some things which diminish the embarrassment of my position. My subject gives me strong claims upon your sympathy. I have to speak to you on behalf of a profession—for a profession it is, in the best sense of the word—which discharges duties of signal importance to every class of our community. I have to advocate the interests of that great institution, whose action so vitally affects our moral and intellectual progress, and so deeply concerns our rights and liberties. Pascal truly said, long ago, that 'Opinion rules the world;' and assuredly, in the last resort, Opinion is the ultimate ruler of this mighty empire. In no republic of ancient or modern times was its authority more masterful and decisive. If it be strong, resolute, and persistent,

it commands success ; and concession follows claim, as night the day. No rooted prejudice, no insolence of power, no class resistance can forbid its victory. I do not speak of that Opinion which is the outburst of passion, dying in the hour of its birth ; or of that Opinion which is simulated by gusts of folly and fanaticism, sweeping through this country from time to time, and justifying, whilst they last, Burke's bitter words when he spoke of the 'light people of England.' The Opinion which prevails must be steady, sober, and enlightened, broadening on from man to man and class to class, until it comprehends the intelligence, and satisfies the conscience of the nation. It may suffer, in the stages of its progress, discouragement and defeat : it may have periods of stagnation following seasons of advance ; but, sooner or later, our free constitution assures its triumph, if it rests on the sure foundation of truth and justice. And, this being so, what must be the power of that Press which is the organ, the guide, and, in a large sense, the creator of this dominant Opinion ? It acts universally, and with influence, for good or for evil, which continually increases. It is like the atmosphere, which affects us whether we will or not—sometimes pure and clear, and sometimes darkened by lurid clouds or poisoned by mephitic vapours,—but now and henceforth a necessity of our social existence, and, on the whole, greatly conducive to our social well-being.

The journalism of our time has improved in proportion to its enormous development. The virulence of political controversy which prevailed in the early part of the century has been softened. When Hazlitt and Coleridge contributed to the daily papers, they were characterised by an acerbity of feeling, a violence of diction, a bitterness of personality, and a bigotry of sentiment, which exist no more ; and, within my own experience, there were publications in the City of London—living on the fœtid breath of

slander, outraging individuals, disgracing the community, and violating all the sanctities of private life—which would not be tolerated now.[1] The existing journals are set in honourable contrast with very many of their predecessors, by their moral blamelessness and their comparative moderation and forbearance in the conduct of public controversies. No doubt there is still room for improvement in many things. There are still writings which should be abated as a social nuisance. But we cannot have all we desire in this chequered world, and we have reason to be grateful for the salutary changes we have seen. The Press plays far better the part of 'The Fourth Estate.' It does not stand in antagonism to any of the other three, but to each of them it offers appropriate and useful aid.

It shapes the feeling and the thought which find expression in the House of Commons, and stimulates the country to force upon its representatives the necessity of making that expression full and fair.

The branch of the Legislature with which, by the favour of my Sovereign, I have the honour of connection, lacks the advantage of direct communication with the masses, and for it the journals are the interpreters of their convictions and the advocates of their cause. It is a special function of the Lords to prevent precipitate decision and forbid premature change. But it is also their function, as it is their safety and their strength, to note the signs of the times and the variations of opinion—to be firm in resistance to pressure which is unwise and untimely, and to yield when innovation comes to be a work of necessity and wisdom. And, to the discharge of this difficult duty, it is of the last advantage that they should be able to look into the mirror of the Press, reflecting accurately the changeful

[1] It is to be remembered in reference to the above passage that it was spoken in 1876.

phases of the national mind, and gauging the forces it exerts to accomplish its purposes.

And even to the Sovereign the Press may, on occasions, prove a saving monitor—forbidding the ignorance or misconception of popular sentiment, which have wrought terrible results, in other times, when doomed classes have sported on the perilous edge of revolution, and awakened to the consciousness of their danger only when the smouldering passions and hoarded vengeance of dumb multitudes have burst forth in fury and hurried them to ruin.

Considering these things, I speak with some confidence when I say that the cause we are met to advance needs, with this audience, no laboured advocacy. '*Res ipsa loquitur.*' You are proud of your Press; you appreciate its uses and respect its powers. Be it good or bad, it is an agency of enormous influence. When it is bad, it is very bad indeed. '*Corruptio optimi pessima!*' When it assails religion, or taints morals, or panders to meanness and corruption, it is diabolic in its strength as in its wickedness. Applied to good purposes, in a worthy spirit, it pours unbounded and incalculable blessings on the society in which it acts.

Now, it is for the benefit of those whose life-long labours endow this marvellous form of literature—which is peculiar to modern days—with an efficiency and completeness undreamt of by our fathers, that your Association has been instituted. They and their predecessors have made it what it is by sacrificing time and health and comfort, and sometimes, in the discharge of duty, life itself. Their labours are continuous and exhausting. The strain upon them, physically and mentally, is sometimes hard to bear. They are often obliged to act at untimely hours and in unpleasant places, enduring extreme discomfort and heavy

pressure, which are inconsistent with any due regard to sanitary precautions, or the preservation of unbroken health. They go hither and thither under the most difficult conditions, and do work as perfectly as work was ever done, in circumstances which make it difficult to do work at all. We poorly appreciate the pain and the toil which often minister to our luxurious enjoyment of those newspapers, which have become to so many a necessity of existence. No doubt, to some, the work of the Press, however arduous, is not only creditable in itself, but also the highway to honour. It opens other lines of life. It has given leadership at the Bar, and dignity on the Bench, to those who, but for its temporary help, would have continued in hopeless obscurity. It has brought rank and wealth within their reach, and made progress easy by the training of mind and pen, the quickness of apprehension and the promptitude of judgment, which come of conscientious literary action. But these are the exceptions. For the many, the life of journalism is a life of unending drudgery. Promotion is not for them; retirement is not for them. The official receives his pension: the lawyer finds a haven of repose and comfort for his closing years—

> 'And that which should accompany old age,
> As honour, love, obedience, troops of friends'

secured to him by worldly position and endowment. Denied these things, the members of the Press, in many sad cases, need, of all men most, the aid of Associations such as this. In relation to their services and its results, their incomes are comparatively small. They cannot, often, provide sufficiently for their families. They may be stricken by disease or overtaken by death, at any moment; and then the heritage of their children is abject penury. No men of any calling more require, or are more entitled to, the best

consideration of the society which reaps such profit from their poorly rewarded efforts. None other, perhaps, have such a title to it. And whilst the painter, the dramatist, the musician, the man of letters, are all so cared for by organised benevolence when sorrow comes to them, as, in a manner, 'it comes to all'; when even the barrister and the solicitor, who have opportunities of gaining incomes beyond the highest aspirations of the journalist, find it needful to guard themselves against the fickleness of fortune, which is to him a far greater peril than to them—why should he be left to suffer, for lack of kindly care and wise provision against an evil day?

Yet I am told that objection has been taken to your Association, and that some who should have advanced it most have shown least disposition to support it. I am sorry for this. I wonder at it, and have hope that a worthier feeling may soon prevail towards an institution which has all the qualities of an admirable Mutual Insurance Society—founded on a sufficient basis of humanity and necessity, and approving its worth by the active beneficence which signalises every day of its existence. Happily, on the whole, it has achieved in a brief period a great success. It numbers already 370 members, many of whom have reason to be most grateful for its bounty. But its list should be greatly enlarged.

The journals of the United Kingdom far exceed one thousand in number. To all of them the Press Fund is open. By all of them it should be heartily sustained. And I would implore those who, in many ways, have interest in them, to help on your young Society in its career of usefulness. Especially, I would venture to hope that the journalists of my own country, to whose generous instincts and large sympathies it so powerfully appeals, will give it, hereafter, the countenance and support which

have been too much wanting—merely, I am convinced, because their attention has not been sufficiently attracted to it. Its existence has been brief, and, so far, it has been chiefly known and valued in this Metropolis. Here, as I have said, Irishmen have abundantly done their duty by it; and I trust that, when your next anniversary arrives, the conductors of the Irish Press will be found to emulate their countrymen in England by, at once, wisely forecasting the future for themselves or those dependent on them, and aiding the children of misfortune belonging to their great profession, who may faint or fall in an honest endeavour to do its arduous work. I ask you to drink, 'Prosperity to the Newspaper Press Fund,' in connection with the health of its distinguished President.

[In responding to the toast, Lord Houghton remarked:—'I was very regretful when I found that the Lord Chief Justice could not come here to-day, but I did as the lady did in the tale of 'Blue Beard,' I went up to a tower and called for Sister Anne. I called to the sister country, and I think I have not acted wrong. (Loud cheers.) One thing Lord O'Hagan has done, he has supplied a terrible argument against Home Rule. What a pity it would have been if he had confined all that talent, all that good-will which he possesses, to one great and important, but still limited island, and not given them to our common country.]

SPEECHES AND ARGUMENTS AT THE BAR

A SPEECH DELIVERED IN THE COURT OF QUEEN'S BENCH, DUBLIN, ON JUNE 20, 1842, IN DEFENCE OF CHARLES GAVAN DUFFY, WHO WAS PROSECUTED FOR LIBEL.

INTRODUCTORY NOTE.

At the Downpatrick Spring Assizes of 1842 four Orangemen were tried, by a jury composed of eleven Protestants and one Catholic, for the murder of Hugh McArdle, a Roman Catholic, and were acquitted. At the same Assizes in Armagh Francis Hughes, a Roman Catholic, was put on his trial for the third time for the murder of a Protestant named Thomas Powell, and was convicted by a jury exclusively Protestant.

On occasion of the conviction of Hughes, an article, entitled 'A Law for the Protestant and a Law for the Catholic,'[1] appeared in the 'Belfast Vindicator,' written by the proprietor, Charles (now Sir Charles) Gavan Duffy. In this it was alleged that justice had not been fairly and impartially administered in the above cases; for in the trial of the Protestants the Crown counsel had insisted on retaining the jury which was in the box at the time the case commenced, although the agent for the next of kin of the murdered man had objected to several of the jurors as partisans; whereas, in the trial of the Catholic, when the counsel for the prisoner proposed that, acting on the precedent established at Downpatrick, a jury consisting of ten Protestants and two Catholics, which had been engaged in the trial of some preceding cases, should be retained, the Crown peremptorily refused, and empanelled a jury of twelve Protestants, some of whom, it was stated, had been heard to express opinions unfavourable to the accused. The writer instanced these two cases,

[1] *Vide* Note B. at the end of the volume.

as illustrative of the system of jury packing prevalent in Ulster, and commented in strong language upon that system.

A prosecution was instituted against Mr. Gavan Duffy for the printing and publishing of this article as of a false and seditious libel, and a bill was found against the traverser by the grand jury of the city of Dublin in Easter Term 1842. In the after sittings the case was tried before Lord Chief Justice Pennefather and a special jury. The grand jury was Protestant exclusively: with one exception the special jury were also Protestants.

Daniel O'Connell, who had practically ceased to appear in jury trials, had been induced to undertake the defence of Mr. Gavan Duffy, and with him were associated Mr. O'Hagan and Mr. (afterwards Sir) Colman O'Loghlen; but Mr. O'Connell, being fully engaged in Parliament, failed to attend the trial, and Mr. Gavan Duffy insisted on the conduct of the case passing to Mr. O'Hagan, in conjunction with Mr. O'Loghlen only.

The counsel for the Crown were the Attorney-General (Mr. Blackburne),[1] the Solicitor-General (Mr. Greene),[2] Serjeant Warren, Mr. Brewster, Q.C.,[3] and Mr. Crawford.

The presiding judge was the then Chief Justice Pennefather. The case was opened for the Crown by the Attorney-General. After the formal proof of the libel had been given, the case for the defence was stated by Mr. O'Hagan in the following speech.

Lord Campbell's Libel Act, which enables the defendant in a criminal prosecution for libel to plead that the inculpated statement was true, and that it was for the public interest that it should be published, had not been passed at the time of Mr. Duffy's trial.

[1] Afterwards successively Master of the Rolls, Chief Justice of the Queen's Bench, Lord Chancellor, and Lord Justice of Appeal.

[2] Afterwards Mr. Baron Greene.

[3] Afterwards successively Solicitor-General, Attorney-General, Lord Justice of Appeal, and Lord Chancellor.

SPEECH.

Gentlemen of the Jury,—I am of counsel for the traverser, and with the most perfect sincerity I say that the difficulty of my position presses upon me, as almost overwhelming. I stand to-day, unexpectedly, on the shortest notice, in the place of one of the most illustrious advocates the world ever saw. But for his parliamentary engagements, Mr. O'Connell would have conducted the case of Mr. Duffy, and now, my young friend, Mr. O'Loghlen, and myself are left to contend against the greatest of the Irish Bar—the greatest in rank, in ability, and experience —marshalled to secure the conviction of our client, with all the power of the Government to sustain them, and all the influence of high office and social station, to advance this first assault in latter days on the liberty of the Irish press. I feel strongly the weight of the burden put upon me; but I feel, also, that I should sustain it in a manly spirit. I feel that the cause which is committed to my guidance is one as pure and sacred as ever tasked the energies of a member of the bar of Ireland; and whatever may be the issue of this trial, no man shall hereafter say that the client or the advocate was wanting in that fearless intrepidity which becomes those who battle for the right of free thought and speech on questions of public moment.

Mr. Duffy instructs me, on his behalf, to repudiate the statement of the Attorney-General, that he is not the writer of the so-called libel. He avows himself the author

of the paper prosecuted here; he justifies that paper; and by the statements in it he is prepared to stand or fall.

The Attorney-General has taken credit to himself for abstaining from the issue of an *ex officio* information. The mercy is not great, for we are told that we shall not be permitted to prove a jot or tittle of the truth of our allegations. But let him have all the merit which may be his due; only do not allow him to prejudice my client in your minds by a reference to the finding of the Grand Jury. That finding was *ex parte.* Mr. Duffy had no advocate before them; and you cannot tell what may have been the nature of the discussion, what may have been the nature of the division, which took place before the Bill was sent to you. Discharge from your minds everything that you have heard as to the acts or opinions of other men; you have nothing to do with them. By your own oaths you are bound—by your own understandings and consciences you should be guided; and I emphatically tell you that, as honest jurors, on the evidence submitted to yourselves, and on that evidence alone, you must return your verdict.

My client has been dragged hither, from his home and his friends, some hundred miles, to take his trial at the bar of this high court. The ancient rule of the British law directed that a man should have all charges against him investigated by those of his own neighbourhood, to whom the course of his life and conversation was known, by whom the nature and tendency of his acts could best be estimated. But, in this case, it has seemed right to the advisers of the Government to try, in the capital of Ireland, an offence—if offence there be—committed in Ulster; and, in every possible view, this is a most serious hardship to the traverser. The prosecutor has no right to claim the praise of leniency; but let this pass.

You are there, empanelled on an occasion as solemn and

momentous as ever assembled a jury of free citizens. You are there, vitally to affect by your verdict two of the dearest privileges which can be cherished by a people—the privileges of a pure jury and an independent press—the great safeguards of national right and national happiness—reciprocally supporting each other, and doomed to common ruin if they do not exist together. Destroy the purity of juries, and power will enslave the press; destroy the freedom of the press, and juries will cease to be protected by opinion when they do their duty, or restrained from error when they are disposed to prostitute their functions, and forget their oaths.

Gentlemen, this is the first State prosecution which has, for many years, been instituted in Ireland. It is only the beginning of the end. If it succeed, others will follow. The old war against the journals will be waged with all its former violence, and the public sentiment of the country will be denied a fair and wholesome development. During those years in which this war has ceased, has there been injury from its cessation to the Government or to the people? Has there ever been less sedition, less turbulence, less disaffection, in Ireland? Has the nation ever rested in more blessed tranquillity? Have crime and outrage ever been so little known? But a new spirit is abroad—a new system is established, and you are this day expected to set a precedent which will be used to justify the contracting of the powers and the palsying of the energies of the press. Will you do so? I warn you to pause ere you do.

I tell you, again, that this is a great occasion, and that great issues hang upon your verdict, not to the traverser only, but to the whole people of Ireland. I tell you that, now as in former times, the virtue of juries is to be tested in defence of public liberty, and I implore you to consider well before you aid in crushing the organs of the opinion

of your country. And what is the case selected for this first onslaught against them? When I read the alleged libel I felt some astonishment that the advisers of the Crown should have thought fit to institute a prosecution. It seemed to me that they should have pondered long before they ventured to prosecute a journalist for stating facts capable of proof, and drawing inferences which are just and reasonable. And now I say to you deliberately that, if this be held a libel—if, for statements which we aver to be true, and conclusions which fairly follow from those statements, punishment is to be inflicted, there is an end to the independence of the Irish press.

What is the duty of a journalist? Not to assail private character, not to violate the sanctities of domestic life—not, even by speaking the truth, to wound the feelings or destroy the reputation of private persons. But it is his duty, or he has none, to watch the conduct of public men, to correct public abuses, to denounce public delinquencies, to testify against public oppressions, and to demand the redress of public wrongs. He is not to be a sopped Cerberus sleeping at his post, a leashed spaniel crouching before the face of power. He ought to be a teacher fearless in propounding truth, a watchman on the hill tower, keen to anticipate and prompt to proclaim the approach of aggression against the rights of his fellow-beings. If he be not this, he is nothing; and if he be, he is entitled to the protection and regard of all men, of all creeds and opinions, who have an honest interest in the common weal.

I am here to maintain the legitimate rights of the press of my country; and I should abandon my duty as an advocate, and forget my integrity as a man, if I did not protest, with uplifted hands, against the doctrine avowed by Her Majesty's Attorney-General, in his most able and plausible address. In the name of the constitution—in

the name of all that is just, and wise, and liberal in our law—I protest against a doctrine which would make officials, high and low, independent of opinion, and forbid the organs of that opinion to discuss their conduct. I say that the public lives of public men are public property; and, so speaking, I only assert a principle which, times without number, has been proclaimed in Parliament, recognised by the bench, announced by constitutional writers as too settled to admit of doubt or cavil, and practically enforced in every district of the empire by the continual usage of every day, since popular institutions rose on the ruins of courtly despotism and arbitrary power. The Attorney-General claims for official persons immunity from the attacks of newspapers. He repudiates the attempts of newspapers to try such persons for public misdeeds, and demands that any charge to be made against them shall be made before the tribunals of the country. Give them such immunity, and you practically relieve them from all control. How many are the cases in which no tribunal has the right or the power to interfere? How many, in which, unless the general mind is rightly awakened, individuals are incapable of enforcing the reform of the most flagrant abuses, the punishment of the vilest outrages against the honour and the interest of nations? I shall prove to you hereafter that this prosecuted paper did the very thing which the Attorney-General says should have been done—that it insisted on having the acts of the Crown officers brought under the attention of Parliament; and, accordingly, those acts have been made the subject of petitions, which must be followed by inquiry. If the journals had not spoken, could this have been accomplished?

But I shall not discuss the consequences of the Attorney-General's proposition. They are plain, as they are fearful: judge of them for yourselves. I am content once more to

protest against it with all my power, and I implore you not to sanction, by your approval, a principle which might have been tolerated in other days, but which must surely startle and astound us, in this time and country. Be your views, religious or political, what they may, you will not place the servants of the public above and beyond the influence of the public sentiment, by declaring that the press shall not dare to question the propriety of their public proceedings. Be you Catholics or Protestants, Conservatives or Reformers, you should equally protect the privilege of free discussion. Each of you has his sentiments represented by some section of journalism. The conflict of its antagonistic forces elicits truth. The jealousy with which those forces encounter each other secures the community from many mischiefs; and I appeal to you all, without exception, as bound, by interest and duty, to sustain their rights.

I admit that, if this so-called libel be, as the Attorney-General has described it, calculated to shake the foundations of social order, aimed to produce discontent with a fair administration of the laws, maliciously designed to inspire the people with hatred against the dispensers of equal and impartial justice—you ought not to favour it at all. But I aver that it is no such thing. How is it a libel on the administration of justice? It does not assail the judge who tried the cases—not in the least degree, or with the most trifling imputation. It does not assail the jury; on the contrary, it declares, in terms, that they gave a conscientious verdict. Other journalists have not been so careful—other journalists have denounced, in the strongest terms, jurors who would not find such a verdict as seemed good to them. Jurors on the former trials of Francis Hughes were so denounced. Jurors at the very Assizes at which he was convicted were so denounced—as Ribbonmen,

regardless of their oaths when they entered the jury-box. Yet none of these charges have been made the subject of prosecution. Not a whisper of complaint is uttered against them, while this article, admitting the conscientiousness of the jury, is proclaimed a wicked and seditious libel. Wherefore the difference? Let those say who can. The court is not impeached, the jury is not impeached, the finding of the jury is not impeached; the writer expressly says that of the guilt or innocence of the prisoner he is not the judge. Whom does he impeach? He states facts, the truth of which he is prepared to prove. He makes observations, which the very statement of the facts embodies. I call on you to consider those facts, and to say whether these observations were not reasonable, natural, and necessary? At Downpatrick four Protestants were put upon their trial; the agent for the next of kin pressed to have the jury challenged; the Crown would not challenge—the jury acquitted the prisoners.

The SOLICITOR-GENERAL: My Lord, I think it right to submit that my learned friend can give no evidence of the truth of these statements, and if he cannot, the statements should not be made.

Mr. O'HAGAN: I conceive that I can give evidence of their truth. The main question is as to the intention of the traverser, and with respect to his intention, it is material for the jury to consider whether he has stated facts or falsehoods. I am prepared to contend, in argument, that we can state and prove the truth in this case.

CHIEF JUSTICE: I am quite clear that evidence of the truth of the allegations cannot be given. If such evidence be tendered, I shall reject it, and the counsel for the traverser, knowing this, will exercise his discretion in stating the case.

Mr. O'HAGAN: My Lord, the Attorney-General stated

facts, of his own knowledge and on his own authority, as to Judge Crampton's charge, as to Sir Thomas Staples, and as to the Crown solicitor, and am I to be prevented from stating facts also?

The Attorney- and Solicitor-General denied that the former had made statements of fact.

Mr. O'Hagan insisted that he had, and urged that the privilege given to the Crown should also be given to the prisoner. He was prepared to argue that, from the course taken in the prosecution, from the nature of this particular case, and especially with a view to the question of intention, he was entitled to state and prove the truth of the facts alleged in the so-called libel.

Mr. O'Loghlen: We have considered the case, and are ready to maintain the admissibility of the truth in evidence. It will put us to great inconvenience if this be not allowed.

Chief Justice: I have great personal respect for both the counsel for the traverser; but I can permit no such evidence to be given, and I now inform them that, if they offer it, I shall not admit it. With this intimation, they will act as they think right.

Mr. O'Hagan: Gentlemen of the jury, I must bow to the decision of his Lordship. It greatly disarranges the course of my argument, and I must claim your indulgence as I proceed. The evidence which I was prepared to offer I cannot give; but I can ask you to suppose the statements in this paper true, and, supposing them to be so, I can further ask you, was the writer, who believed in their truth, justified in making the publication? Suppose that Hughes had been twice tried in Armagh, and that, by a proceeding almost without precedent, he was submitted to a third trial. The first allegation is that his agent offered to give the Crown solicitor the selection of a

jury composed of four Catholics, four Presbyterians, and four Protestants, and that the offer was rejected. There is no libel here. My learned friends smile at the statement; but that offer was not qui e abhorrent from the principle or unjustified in the practice of the British law. An alien coming to this country is entitled to a jury *de medietate linguæ*—a mixed jury of foreigners and subjects of the realm. And in one of the darkest and most troubled periods of Irish history, when a Catholic king was struggling for his crown and his existence, Catholic judges, sent to the counties of Down and Derry, tried Protestant prisoners for offences against that Catholic king, by juries equally composed of Catholics and Protestants. The fact is historical, and the statement of it may not be without advantage; but at all events, as to this matter there is no libel.

Next, the publication sets forth that persons who had declared opinions hostile to the prisoner were pressed into the jury-box by the Crown counsel. If this were so, was it not a fair subject for honest animadversion? At the trial, the counsel for the prisoner argued that the counsel for the Crown were wrong; but suppose that, in strict law, they were right—suppose that, from musty folios, they produced old cases to sustain their objection to the prisoner's challenge—is it not a most grave and serious question whether they should have enforced their privilege, and was it not competent to a journalist to argue that they were wrong in doing so? May not the exercise of a power be fitly condemned, even though its existence be admitted? On the same circuit, at the next town, a totally different principle was acted on in a criminal case, and the ground of challenge, which did not prevail in Armagh, was held sufficient in Monaghan. The juror should stand indifferent as he stands unsworn. He should be without fear, favour,

or affection. If one of you were to be tried for his life, would he deem that man indifferent who proclaimed that he had preconceived opinions on the very question, which he was solemnly sworn to determine upon the evidence adduced? And is a public journalist criminal in declaring that the Crown officials would better have done their duty, and more promoted confidence in the administration of the laws, if they had waived a right which ought to be obsolete, and allowed a juror who held such preconceived opinions to stand aside, in a case of life and death?

Next, suppose it to be the fact, as stated in this paper, that in Armagh every Catholic was challenged—every single Catholic on the panel—the most respectable, the most influential, the most unimpeachable of the Catholic community: was that a fair subject of observation to a journalist? Was that a state of facts calling for animadversion and coercing inquiry? A pure Protestant jury tries a Catholic prisoner. Shall no man ask why it is so? If one of you, a Protestant, residing in a Catholic country, in a case involving a conflict of opinion between Catholic and Protestant, should be tried by a Catholic jury, would he be content? Ought he to be content, if he saw Protestants of unblemished reputation, peremptorily, without cause assigned, one and all thrust from the tribunal which was to fix his fate?

The case of Hughes was a wretched one. It was that of an unhappy being, who had twice sustained the living death of a trial for murder; who was emaciated by long imprisonment; humble, ignorant, and friendless; contending against the wealth of the Treasury, the energy of the agents of the Crown Office, the ability and learning of the Crown counsel, and the weight of obloquy which crushes to the earth the man who is even

accused of a heinous crime. Truly, the contest was unequal; and in such a case, those who conducted the prosecution might rightly have been slow to give the merest colour of reason for public complaint against their proceedings.

The conviction of guilt should not be the single object of a wise and far-seeing executive. That conviction may be dearly purchased; and the purchase will be very dear, if it endanger the confidence of the people in the administration of the law. The general content of the commonwealth, the reverence of the country for its jurisprudence as not only pure but above all suspicion, are jealously to be maintained. The real power and efficiency of human enactments rest ultimately on opinion;—not on mere force, not on the terror of punishment, not on the misery of the dungeon, and the horrors of the scaffold—but on the respect of free minds, and the attachment of honest hearts, of minds approving their impartial equity, and hearts relying on them with generous trust.

> 'Quid leges sine moribus
> Vanæ proficiunt ?'

The whole history of our country proves that this is the true doctrine; that sanguinary punishments do not always enforce obedience, and that justice itself may be accomplished to disastrous issues.

In this instance, if Hughes had been guilty as the guiltiest, the exclusion of a particular class from his jury—the rule as to the challenge—the contrast between his case and that in Down—were they not calculated to destroy the moral effect of his conviction? And was a journalist not entitled to speak of them as he thought? If the facts were so, was not commentary on them necessary? And if any commentary was necessary, could it have been less

strong than this? If there be any right to remonstrate—if there be any privilege to complain—if there be any latitude for honest observation upon public matters, was not this, of all others, the case in which a journalist was bound to speak; and if he spoke, what milder phrases could he have employed? The question is, shall any right of free speech remain at all?

At the trial of Hughes—whilst he stood at the bar, trembling between life and death, before the very jury which was the subject of observation, before the judge who had watched the progress of the trial, in the face of the county which was cognisant of all its circumstances—his counsel spoke these words, and I am entitled to read them, for they are published in the same newspaper which contains the alleged libel:—

> If opinions are previously formed as to the prisoner's guilt, and acted upon by the gentlemen in that jury-box, then he does not stand here to be judged according to the evidence, but to be sacrificed; to be made the victim of those previously formed opinions. If the gentry of the county felt it their duty to meet, and memorialise the Government for a special commission to inquire into the case, and procure an improved panel—and I can now, gentlemen, well understand the meaning of an improved panel—you, I am sure, will not be influenced in the slightest degree by those circumstances. If the press, backed by the gentry of the county, commented upon the circumstances detailed on the former trial; if subscriptions were raised to fee able counsel; if numerous attorneys have been engaged to hunt for evidence against the prisoner—you, gentlemen, sworn, as you are, to act without favour or affection, will, I am convinced, examine carefully into the whole case, as it will be laid before you, and from the evidence alone find a verdict as to the guilt or innocence of the prisoner.

There are other circumstances which I wish to submit to you, and I submit them advisedly, for I have conferred with my learned and worthy colleagues on the subject. We are not

willing to gain a verdict by any mean or unworthy subterfuge; we wish to act fairly and above-board. Trial by jury is a safe and noble mode, and I have learned to respect it; but, gentlemen, no man should be excluded from that box, except such as are of infamous character. Gentlemen, it is a strange privilege which the Crown has assumed, that of putting men on the panel as jurors, and on occasions of this kind to exclude them from that jury-box. A more fatal precedent could not be acted on than that of excluding from any jury a particular class of persons, because they entertain particular opinions on matters of religion; and I must say that the Crown is exceeding its duty when they refuse to allow a man to be placed in that box, as a juror, who is a Catholic. It is the bounden duty of the Crown not to exclude any person from that box who is not of bad morals or of infamous character. If any of you, gentlemen of the jury, were on trial in another country, and persons of your religious views were excluded from the jury-box, I would say, as I do now, that it was unjust and unfair.

Another matter occurred yesterday of which I feel it to be my duty to take notice. I make no complaint; the Crown had a right to take one course at the last trial, and another course at the present one. Many honourable men, whose word was as good as their oaths, were set aside from the jury on the last trial, on the ground that they had already formed an opinion on the subject. On the present occasion, however, to my surprise, they have changed their tactics, and the counsel for the Crown insist on the strict letter of the law being carried into effect. To my inexpressible surprise, although a gentleman has stated in your hearing that he had made up his mind on the matter, they insist, I say, on his being placed as a juror in that box.

If such things were said by the able and eloquent counsel for the prisoner,[1] with the full approbation of his colleagues—of whom I was one—could a public writer be silent altogether upon the matter? And is he to be blamed and punished for stating, in mitigated terms, the very charges which were made before the judge and the

[1] Mr. Whiteside.

jury by the prisoner's advocate? Those charges I shall not be allowed to sustain by evidence; I am forbidden even to say that they are true; but when I stood with my learned friend, battling for the life of our unhappy client, at Armagh, our lips were not so sealed. He proclaimed the truth of those charges there, in the hearing of those whom they affected, and of those whose personal knowledge would have enabled them to testify against him, if a single one of his allegations had been false. You will read his speech; you will read the report of the trial, which is also, fortunately, in this newspaper; and you will say, on your oaths as honest men, whether, upon that trial and upon that speech, the commentary of the traverser was not fair, just, and legitimate. You will say whether, having that trial and that speech before him, he would not have betrayed his trust, if he had not expressed, with manly vigour, his condemnation of proceedings which he deeply disapproved. You will say—if, under such circumstances, a public writer was bound to be silent, are there any circumstances conceivable in which he is privileged to speak?

I might rest here—upon the necessity of the case, the right of the journalist, and the fair and faithful exercise of that right,—and insist that no jury should strike at the very heart of popular opinion, by convicting him, as a criminal, for that fair and faithful exercise. But I will go further, and state what I conceive to be your proper province, and the real question which you are to try. For twenty years or more, there was a struggle between the bar and the bench of England as to the extent and nature of the jury's functions in libel cases. The bench insisted that the law was solely for itself, and that the jury had nothing to do but to find the fact of publication and the innuendoes. This doctrine was dogmatically and imperiously asserted; and the time was when, for disputing

his arrogated power, an upright juror was committed by an unconstitutional judge. The bar contended that the whole question was for the jury; and after lengthened struggles, when the bold advocacy of men, whose names must be ever dear to the friends of freedom, had made the public mind ripe for the wholesome change, Fox's immortal Act decided the dispute, and restored to juries their ancient prerogative.

The question—libel or no libel?—is now for your sole determination. The judge may give his opinion, but that opinion in no way binds you; and on you alone is the responsibility of deciding according to your consciences and your oaths. You, and you only, are answerable, if an unjust verdict is returned. No argument of a prosecutor, no dictum of a court, can coerce you. You cannot shift the duty from yourselves. You cannot rely upon an opinion suggested at the bar, or dictated from the bench, as controlling your judgment. The whole matter is for yourselves, and to your God and your country you are accountable for your dealing with it.

The law on this subject is admirably stated by one who, when 'great men were amongst us,' was of the greatest of them all; by one, whose rare genius, exalted to its noblest development in the struggles of his early patriotism, will be a pride to Ireland whilst her language lasts; for I do trust the time may never come, when our religious and political dissensions shall so extinguish the spirit of our common nationality, that we shall refuse to reverence high faculties, the growth of our own soil, because we may not altogether approve the mode of their exercise, or the aims to which they are devoted. Listen to Lord Chief Justice Bushe, and learn the powers which are committed to you, and the rule which should govern your employment of them:—

'Gentlemen,' he said to the jury, on the trial of John Magee, 'it has been attributed to me that, on former occasions, I contended for slavish doctrines, and endeavoured to fetter the constitutional jurisdiction of a jury, and transfer their functions to the bench. But it was a charge which could not justly be made against me. The question has been tried before the proper tribunal. Gentlemen, on this occasion I say it is not only your duty, but your exclusive duty. The whole question is for your disposal—a question upon which the judge has as little right, as, I am sure, he has disposition, to interfere. That is now undoubted law. It was the ancient law, once misunderstood, and again recognised. By the Libel Act you are to decide on the whole matter of the record; not only to pronounce whether the traverser published this libel, but with the intention and meaning imputed by the indictment; and, on this popular question, it is the duty of the jury to construe it, not closely or rigidly against the defendant, but with the most liberal indulgence. This is your exclusive province. The judge has no right save that of stating to you his opinion, but without any authority to control you.' [1]

Read the paper of my client in the light of that clear exposition of the law of the land. Remember that 'the whole question' is for you; and come with me to consider what it is, and how you are to decide upon it.

You are asked to find that this is a false, wicked, malicious, and seditious libel; and, further, that it was written with the objects imputed to it, and particularly for the purpose of bringing the administration of justice into contempt. I shall, I hope, demonstrate to you that you cannot, on your oaths, find either the fact or the intention; that this is such a libel as it is stated to be, or that it was composed and published with the purpose alleged in the indictment.

First, can you find that the paper was written with the intention charged? You are not to say whether it

[1] Report of the King *v.* John Magee, p. 154.

was meant or calculated to do general mischief, but whether it was framed to do the particular mischief which the pleader for the Crown has thought fit to allege as the aim of its writer. And, in considering this, you are to form your judgment, in the merciful spirit of our law, which tells you that, if you have a doubt, the traverser is entitled to his acquittal. You are not to weigh every syllable with an anxious desire to find sedition lurking in its letters; you are not to adopt strained constructions because the indictment suggests them to your minds; and if a passage may have double meanings you are to attribute to it not the meaning which will satisfy the vengeance of the prosecutor, but the meaning which will secure the prisoner's safety.

Holding this principle in recollection, I ask you to consider the innuendoes laid, to contrast them with the words which they profess to explain; and then to say whether, treating my client with the 'liberal indulgence' which he may properly demand—nay, with the strictest justice, which, in the simplest civil case, you would mete to a defendant—you can, upon your oaths, declare that he had the intentions and the objects which are imputed to him?

I shall deal only with the first count of the indictment. If it be not sustainable, the Crown cannot rely on any other. It contains seven material innuendoes; and, taking them consecutively, I shall endeavour to demonstrate that not one of them can you safely find as it is laid. I shall begin with the last. Here is the passage which the pleader undertakes to explain:—

We have seen the promptness and zeal with which the Presbyterian community exerted themselves in a matter of minor importance; if we are apathetic, no man amongst us—no matter how exalted or how virtuous—can promise himself that

he will not some day become the victim of false witnesses and packed juries.

What does that mean? Plainly this:—that, unless the Catholics of Ulster constitutionally exert themselves to prevent the continuance of an evil practice—if, by their apathy, they allow the conduct of the Crown solicitor, in his challenge of jurors, to be erected into a precedent—they will suffer for their folly and indifference. 'Some day,' when corruption may, hereafter, require to be sustained in high places; when a system of general wrong may need to be upheld by the sacrifice of individuals; on some such day, officials, emboldened by the impunity of their predecessors, may make victims of the exalted and the virtuous, by packing juries and suborning witnesses. The reference clearly is, not to the past, or to the present, but to the future, and it involves no necessary impeachment of the integrity of the prosecutors in Down and Armagh; for, even supposing their acts to have been dictated by the purest motives, they may have established a pernicious example, capable of being perverted to the vilest uses, by worse men in worse times. Now, what is the innuendo?—

> Meaning thereby to insinuate that the witnesses who had been examined on the trial of the said Francis Hughes had given false testimony, and that the jurors of the jury by whom the said Francis Hughes was so tried as aforesaid had been improperly and corruptly selected, in order to procure an unjust verdict against the said Hughes.

That is the innuendo. Was there ever a grosser perversion of plain language? Expressions indisputably regarding only the future are made to bear upon the past. What is anticipated, as a contingent possibility, is pro-

nounced a realised fact; and allegations are attributed to the traverser, of which, so far as this paper is concerned, there is not a particle of evidence that he ever dreamt. 'Meaning, that the witnesses had given false testimony'! Why, did not the writer strictly guard himself against such a charge, when he disclaimed all right to decide on the prisoner's guilt or innocence—to weigh the testimony against him—to estimate its value or its worthlessness? And how can his anticipations, as to future witnesses and future juries, be held to impeach evidence already given, and verdicts already pronounced? Take the paper into your box; compare the traverser's words with the prosecutor's explanation of them; and, if you can venture to find that explanation just and true, convict my client. If you cannot—or if you doubt upon the matter—you are bound to say that he is not guilty.

I take another innuendo. Here is the paragraph to which it relates:—

We may mention as a curious coincidence—for we cannot permit ourselves to think that it is a further illustration of the system—that, while an approver was employed against Hughes in Armagh, the Crown counsel actually refused to receive the testimony of an approver in the Ballyroney case—Stewart, one of the murderers, having to the last minute desired to become Queen's evidence. This fact, which has not before reached the public, we would not now mention if it were not so pertinent to the present case, in which Hanratty was joyfully received and produced against Hughes.

Now, mark the gloss which is put upon this statement:—

Meaning thereby to insinuate that the persons entrusted with the duty of administering justice in Ireland improperly and corruptly endeavoured to favour the said William Matthews, William Andrews, Thomas Scott, and William Stewart, in order to procure their acquittal.

That is—although the writer has expressly stated that he did not, and could not think the rejection of the approver a part of the system which was the subject of his disapproval, you are asked to find, upon your oaths, that he meant to describe it as a part of that system! The mere assertion of the fact is no libel. Will you find that it was asserted with a view the very opposite to that which my client has avowed—to that which his words directly and distinctly express? You must do so, or you must acquit him. I will go on to the innuendo which is affixed to the following passage:—

He has not been tried indifferently, as a person under the protection of the law, for whom the judge is counsel, and the executive an unprejudiced arbitrator; but he has been tried as an Irish Catholic, whose guilt ordinarily appears to be assumed, and whose conviction seems to be desired.

Meaning thereby, says the innuendo, to insinuate that it is the wish and desire of the persons to whom the administration of justice in Ireland is entrusted, to procure and obtain unjust convictions of accused persons professing the Roman Catholic religion in Ireland.

Is that the meaning of the passage—the necessary meaning—the only meaning which you can fairly put on it? The question is not—whether you suppose that such may be the possible meaning? You must be satisfied, beyond all reasonable doubt, that the writer meant what is imputed to him, and nothing else. Remember that you are to regard his words with 'the most liberal indulgence,' and, if there be two constructions equally open to you, you are bound to adopt that which is consistent with his innocence. Now, to say the least of it, this passage may have been composed without the intention set forth by the pleader. 'The guilt of an Irish Catholic ordinarily appears to be assumed, and his conviction seems to be desired.' Whose is the assumption? Whose is the desire? If they

be not necessarily the assumption and desire of the persons who administer justice in Ireland—if they may, without any straining of language, be presumed to be those of any other human beings—this innuendo cannot be maintained. And can you say, that they may not be so? Suppose that of a community polluted by bigotry and racked with religious strife, it should be asserted that the perversion of the most sacred principles, and the prostitution of the divinest truths, had so degraded and brutalised the nature of its members, that ordinarily they were disposed to regard each other, not as brethren to be loved, but as criminals to be punished. Can a form of phrase be found more clearly to describe so melancholy a condition of things, than that on which I am now fixing your attention? Without any reference to any officers of justice, may not these words fairly be held to mean that there is ordinarily a prejudice against accused persons of a particular class, amongst persons of a hostile class—that there is an evil spirit in the country, assuming guilt before inquiry, and desiring conviction though that guilt is unproved? If the writer may have had this meaning—if he may have intended to describe the ordinary state of feeling in a distracted society—then it is your plain duty not to put upon his expressions the unfavourable construction which the Crown has put upon them. Read this paragraph deliberately—consider the suggestion I have made to you. Recollect that, if you think the words fairly capable of the two interpretations submitted to you by the prosecutor and the prisoner, or of any other interpretation in the world, I am entitled to claim your decision in my client's favour. If your judgment wavers—if you hesitate and doubt—you must acquit him.

The four remaining innuendoes I shall dispose of together. They all describe the traverser as having charged

the administrators of the laws in Ireland with deliberate corruption; and, unless you are satisfied that he did mean so to charge them, the prosecution fails. Take the whole article together—compare its several parts, and I defy you to come to any such conclusion. The writer has explained his own meaning, and put it, in my mind, beyond your power to find, without a doubt, that his object was to impute corruption to any person. He states the circumstances of the two cases, and places them in startling contrast. He describes the exclusion of every Catholic from the Armagh jury; and then he proceeds to inquire, with what purpose and on what principle such a course of proceeding could have been adopted? Mark, I pray you—mark his own answer to his own question:—

And what is the meaning of this scoundrel system? What can it mean but one of two things: either the insolent and atrocious libel that Catholics are unworthy to be trusted on their oaths, or the infernal principle that it is desirable *not* to do them justice? We cannot mince the matter; it comes precisely to this. We do not care which horn of the dilemma is chosen, but one of them is inevitable.

It is time for the Catholics of Ulster to ask themselves, is this system to continue? Are they to be for ever the victims of a sanguinary and insulting usage, which does not stab them more effectually when it inflicts an unjust verdict, than when it audaciously turns them out of the jury-box, as incompetent to perform its duties with honesty and propriety?

Here are two explanations of the facts. Consider them, and you will see that it is impossible to sustain the innuendoes of this indictment. Either the Crown officials meant to do injustice, or they did not think Catholics fit to act as jurors. Now, take the second branch of the alternative. It would establish a grave charge against the persons who acted on such a principle. It would exhibit the public servants of the country as insulting the great body of the

people, and doing them grievous wrong; but it would furnish no shadow of support for this indictment. Suppose the persons who challenged the Armagh jurors to have been mistaken in their opinions; to have been the slaves of ignorant prejudice and blinded by insensate bigotry; to have reduced to action in a court of justice sentiments which have been proclaimed in higher places, imputing disregard of the obligation of an oath to the Catholics of Ireland—suppose all this to have been charged, and truly charged, there would, nevertheless, have been an utter absence of any charge of corruption. The exclusion might have been insolent and the intolerance revolting; and yet the men, effecting the one and cherishing the other, might have been unconscious of any corrupt motive. The distinction is expressly taken by my client. Adopt his alternative, and the Crown officials might have had no desire to do injustice, and yet have put the grossest and most groundless insult upon the Catholic people.

If this be so, is it possible for you to find that he did intend to impute corruption to those who administer justice in this country? You must find that, positively, if you convict him. The pleader for the Crown calls on you to find it; and, if you have a doubt whether the traverser meant to allege corruption or something else, there should be an end to the prosecution. And can you, with the words which I have read still sounding in your ears, think of declaring that he meant certainly, singly, and without any question or alternative, to denounce the Crown officials as corrupt, when he intimates an explanation of their conduct inconsistent with any imputation of corruption? Can you say that the man who put a statement of facts before the world, and suggested for the consideration of the country, with equal clearness and energy, two modes of accounting

for their existence, meant to adopt one of those modes and to reject the other, when there is not a word or syllable in his article to indicate such a meaning or intent? Yet, you must find this, upon your oaths, or you must acquit my client.

I have discussed every innuendo of importance in the first count of the indictment; and, if I have succeeded in proving to you, either that the sense of my client's expressions has been perverted by the pleader, or that you must entertain a serious doubt as to the correctness of his interpretation of them, I trust you will do your duty as independent and upright men, and return a verdict which, whilst it will avert from a public journalist the ruin with which he is menaced for fairly discussing a great public question, will fully satisfy the justice of the case, and guard from deadly injury the freedom of the country.

I shall not weary you by a reference to the remaining counts; for, disposing of the first, you dispose of them all. But I must pray you to consider the general intention alleged in this indictment. You are required to find, upon your oaths, that my client maliciously and wickedly contrived to bring the administration of justice into contempt. This is the very essence of the charge against him. Unless you find that he had this evil purpose, he is entitled to a verdict of not guilty. It is a high crime to bring the fair and impartial administration of justice into contempt; and when any one, from selfish ambition or love of gain, or other corrupt motive, assails institutions which should be held in reverence, and men whose position and character should command respect, he does an act which must bring on him the displeasure of every good citizen.

But my client did nothing of the kind—intended nothing

of the kind. Take the whole of this article together, and I defy you to say that his intention was malicious or wicked. Suppose the truth of the facts stated—I shall not be permitted to prove it; but, suppose that all Catholics were challenged in Armagh; that no challenge was permitted in Down; and that the contrast between the cases had produced general and strong excitement through the north of Ireland. One of the main uses of a public journal is to neutralise the possible mischiefs of such excitement, and to direct it to its proper uses. Journalism, in times of trouble, conducts the lightnings of popular passion, without injury, over the surface of society, which, wanting its guidance, they might wither and destroy. It gives utterance to those general discontents which would otherwise fret and fester in the bosom of a nation, and find their only escape amidst the agonising throes of revolution. Where the press is free, social order reigns. Where opinion has no constitutional organ or influence, men can never rely on the permanence of peace, or the integrity of political institutions. Suppose the writer of this paper to have composed it at a time of great excitement; and, in the honest discharge of his duty, to have strongly spoken of what he truly felt—to have assailed the causeless exclusion of Catholics from the jury-box in emphatic terms—to have said that the law was not administered in the same way, when all of a particular class were challenged in Armagh, and none of any class were challenged in Downpatrick—is it therefore to be imputed to him that with deliberate malice he laboured to bring the administration of justice into contempt? The assault, I repeat, is not on the judge, the jury, or the verdict. It is a questioning of the conduct of the Crown solicitor; and is it to be said that such an official should have absolute immunity from all investigation of his conduct by the Press? Is a strong and earnest remonstrance against his pro-

ceedings to be tortured into a malicious and seditious libel on the general administration of justice? On your oaths, do you believe that the writer of this paper had the smallest portion of malice or wickedness in his motives when he penned it? Do you not believe that he intended, *bonâ fide*, to observe fairly on a public question? Do you not believe that instead of proposing to bring the administration of justice into contempt, his real object was to prevent the bringing of it into contempt by checking a course of conduct calculated, in his judgment, to make it really contemned?

I will read to you the opinion of a writer not specially liberal in his views of the libel law, and by his decision I am content that my client shall be judged. (Mr. O'Hagan then read a paragraph from 'Starkie on Slander,' p. 183, showing the right of every one to discuss public matters 'candidly, honestly, and sincerely.')

If you believe that the traverser acted, in the discharge of his public duty, candidly, honestly, and sincerely, for the public benefit, you cannot impute to him malice and wickedness in this publication. He may have used strong expressions, and it was natural and almost necessary that he should do so:—

> 'The blood will follow where the knife is driven,
> The flesh will quiver where the pincers tear;'—

and if he believed that an insult—a flagrant and galling insult—had been put upon the body of which he was a member, the terms of his complaint may not be the less justifiable because they are emphatic. But you will not force upon his language a construction which it does not naturally bear—you will not be astute to discover crime where innocence may reasonably be presumed—you will not be induced by the special pleading of accomplished lawyers

to pervert the plain sense of plain words, and to extort from them a meaning which the author never intended them to convey. The question is—malice or no malice? I cannot doubt the answer from a jury of honest men.

Next, you must find that this publication is a false and seditious libel. It is charged as false throughout the indictment. The Crown has given no evidence of its falsehood: I offer evidence of its truth, which is rejected. You must find it false if you convict my client. The ancient law of England—the law of Alfred, the statute of Westminster, the Act of Richard II.,—all require that the slander or the libel, to be punishable, shall be false. The ancient law of Scotland permitted charges of every kind to be made, even against the judges, if they were sustainable in evidence; but I am forbidden to offer proof of a single statement. The Crown counsel object to the admission of the testimony which I am prepared to give; the Court rules with them, and I must be silent. The great Lord Erskine has declared his positive opinion, that, though truth is no warrant for abusing a private man, it is quite another case with respect to seditious libels. The Attorney-General thinks otherwise; and must the paper, which the Crown brands as false, be so found, without a particle of proof, that it is not, in every iota, absolutely true?

Is this a seditious libel? Sedition is that which excites to unwarranted and lawless proceedings against the Government and the Constitution of the country. The writer here complains of public grievances, and points to the means of redress. What are they? Violence—insurrection—defiance of the laws? No such thing. He advises the people to adopt that very course which the Attorney-General has said, this day, they ought to have adopted. He advises them to follow the example of the Presbyterian body,

who met and petitioned Parliament for the establishment of their rights in relation to the marriage question; and, accordingly, petitions have gone to the House of Commons, and the matter is now actually pending there. Is this sedition? On your oaths, is this sedition? Was it sedition to advise the very step the Attorney-General now advises, before my client was ever favoured with his counsel?

I insist, then, that this publication is no libel on the administration of justice, but a legitimate investigation of a public question, which it was the traverser's undoubted privilege to discuss. I insist, that there is no pretence for charging him with a malicious design to bring that administration into contempt, because he 'candidly, honestly, and sincerely' exercised his right of publishing his opinion on a topic of great general interest, manifestly with the intention of doing public good, and not of doing public mischief—not of making the laws contemned, but of checking official persons in a course of conduct eminently calculated to make them so. I insist that the general purpose of the traverser is falsely stated in this indictment, and that its innuendoes are not sustained; and if you believe that they are not—if you believe that my client never cherished the foul malice imputed to him—if you believe that his publication is not false, wicked, and seditious, or if, on any or all these points, you have a rational doubt, I confidently claim your acquittal. Finally, I insist, that, assuming the facts stated in this so-called libel to be true, it was the bounden duty of the traverser to comment upon them, and to comment upon them with manliness and force. I insist that he would have failed to do his duty, if his rebuke of official persons had been less vigorous, or his appeal to the opinion of his country less effective. His words may have been strong, but you will estimate them only as manifesta-

tions of the writer's mind; and if you believe that his aims were pure and good, you will not pronounce him criminal, because of their righteous energy.

And now, if you shall say that this is a libel, what bounds will you set to the control of the Executive over the Press? If, on such a subject—regarding the administration of justice, and the conduct of the salaried servants of the State—vitally affecting the liberties of the people, that Press is to be silent, or punished when it speaks, its liberty is gone. It is the principle of the English law, that there should be jealous scrutiny of the acts of men in office, and fearless questioning of the propriety of their proceedings. It is the practice as well as the principle in England; the principle exists in Ireland, but there is a disposition to avoid the practice. That may be published without the shadow of apprehension beyond the Channel, which here will subject its author to absolute destruction. This very publication—so bitterly assailed in Ireland—has been reprinted in London, with commentaries incomparably stronger than itself; but there the publisher is safe: here, he is menaced with all the terrors of the law. Is the distinction just, fair, or tolerable? If you would perpetuate it, convict my client; if you would save your country from the degradation and disgrace of its continuance, treat him as he would be treated if he were an Englishman, and let him go free. Find him guilty, and we shall no longer have any effective check on public immorality—on public malversation—on public corruption. The Press will have its clear voice muffled, and its strong arm shortened; and, instead of controlling official persons, denouncing their abuses, and resisting their wrongs, it will be forced to bend before them,

> With bated breath and whispering humbleness;—

to become the convenient tool of power, and the despicable

pander to oppression. If my client was not entitled to awaken the people to make their complaints constitutionally heard upon the state of facts alleged in this publication, no man can ever safely censure the faults of public servants. If truth could not be spoken in this case, without pains and penalties, the rights of the country can have no assertor, who is not prepared to make himself a sacrifice for the redress of public grievances. If you send the traverser to a dungeon for proclaiming notorious facts and drawing obvious inferences, there is an end to freedom of speech in Ireland. Who will venture hereafter to complain of any officer of the Crown, if his reward is to be ruin? If you convict, tell me where is the line at which truth shall cease to be tolerated, and fulsome falsehood or baser silence become the duty and the interest of public writers?

The questions this day submitted to you are—I state them broadly, plainly, and fearlessly—shall there be henceforth free thought and speech in Ireland? Shall the purity of the jury-box be guarded by the freedom of the press? Or shall that freedom be crushed and annihilated, because it has been exercised to keep the taint of sectarianism from our tribunals—to gain for the law the people's glad obedience, by testifying against proceedings which cast suspicion on the integrity of its administration, and to secure for Irishmen that equal and impartial justice which they have ever loved? These are the momentous questions which you have to resolve; and therefore am I earnest and importunate in imploring you to pause before, by a verdict of guilty, you do irreparable mischief to your native land.

The fate of my client is in your hands. He is young, of great ability, and sterling worth, fighting his way with honour through the world. He feels that he has done his

duty, and does not shrink from the responsibility of acts which have been honest, and words which have been true. You will not send him to herd with felons in a gaol—you will not blast his fortunes and crush his springing hopes, and, perhaps, consign him to an early grave—for imprisonment his health would not sustain—because he has plainly spoken his strong convictions on matters of great general moment. I trust you will not. But the interests of the individual are identified with the greater interests of the nation. The contest is for that liberty which Milton pronounced the most precious of all liberties—the liberty to speak freely, according to conscience. The issue is, not merely between Charles Gavan Duffy and the Irish Government, but also between the Irish Government and the Press and the people of Ireland. It is a great occasion, and great results for good or evil depend upon your verdict. Your conduct is watched with anxious and solemn interest. Be true to your trust—be faithful to your oaths and to your country. Demonstrate that, however great may be the power, and influence, and talent, arrayed against the traverser, were they tenfold or ten thousandfold as great, he would be safe in the protecting virtue of an Irish jury. He asks justice—mere justice—at your hands. Be just to him, and his acquittal is secure; and, pronouncing that acquittal, doing your duty without fear or favour between the sovereign and the subject, you will, while you exist, rejoice in the remembrance that your judgment this day contributed to secure to yourselves, and to your children, and to your children's children, the inestimable blessings of a pure Jury and a free Press.[1]

[1] From a number of complimentary extracts referring to this speech—the first which Lord O'Hagan delivered as leader in an important case—I select two, one from the charge of the judge before whom it was spoken,

[After the charge of the Chief Justice, which was strongly against the traverser,[1] the jury retired, and in six minutes returned with a verdict of *Guilty*. Sentence was postponed until next term. But before the Court of Queen's Bench could reassemble a change of administration occurred, and there was no further proceeding in the case.]

and who certainly had little sympathy with its sentiments, the other from a letter of Robert James Tennent—a most distinguished man among the Liberals of Ulster, and one of Lord O'Hagan's earliest and staunchest friends. The Chief Justice said: 'After the very able and very powerful address which you have heard from the traverser's counsel, I, for one, feel no reason to regret that he has been deprived of the presence of the other counsel (Mr. O'Connell), whom he had retained, and whose absence has been lamented; and I will venture to say that, in the able advocate who has appeared before you, the traverser wanted no assistance which the law of the land could have afforded him.'

Mr. Tennent wrote: 'Even if I were *not* an old friend and fellow-townsman, I think I could hardly refrain from congratulating you on the noble display of argument and eloquence which you have made in the case of Duffy. In any case whatever I have no doubt you would have done your duty honestly and ably, but I especially rejoice and congratulate you that you were first put to the proof as a leader in a cause where the interests of public liberty, of equal law, and of free discussion were so intimately connected with those of justice to an individual. . . . Again I congratulate and *thank* you. That you have achieved a professional and public character for yourself is no unworthy subject of satisfaction to your friends; but I am sure they must still more rejoice, as I do, that you have done so by the same act which writes your name upon our Irish annals as the first in the gap to resist the restoration, in all their original malignity, of the evil principles and despotic practices of evil and despotic times.'

[1] *Vide* Note C. at the end of the volume.

ARGUMENT ON THE MOTION FOR A NEW TRIAL ON BEHALF OF CHARLES GAVAN DUFFY, DELIVERED AT THE STATE TRIALS OF 1844—THE QUEEN v. O'CONNELL AND OTHERS.

INTRODUCTORY NOTE.

The year 1843 was, as is well known, marked by a strong popular movement in Ireland, headed by Daniel O'Connell, in favour of repeal of the Legislative Union. The meetings for this object were attended by vast numbers of persons, and were commonly termed 'monster meetings.' One of these was announced to be held at Clontarf near Dublin on Sunday, October 8, in that year. On the preceding day the Lord-Lieutenant, Earl de Grey, issued a proclamation forbidding the holding of the meeting. Mr. O'Connell at once countermanded the arrangements, and the people, in obedience to him, refrained from assembling. The place intended for the meeting was occupied by a military force.

On October 14 sworn informations were lodged against Mr. O'Connell, his son John, several other leading members of the Association, and the proprietors of newspapers which had advocated the movement; amongst the latter was Mr. (now Sir Charles) Gavan Duffy, proprietor and editor of the 'Nation,' the organ of the Young Ireland party. Grounded on these informations an indictment was laid before the Grand Jury of the city of Dublin early in the following term, and found. This indictment, which was of enormous length and comprehensiveness, substantially charged the accused with a seditious conspiracy to obtain the repeal of the Union by overawing Parliament through displays of physical force.

The traversers were tried at the Bar of the Queen's Bench before the full Court, presided over by Chief Justice Pennefather. The jury was a special jury, struck according to what is now called 'the old system'—that is, forty-eight names were balloted for from the entire special jury list; the Crown and the traversers were entitled to strike off twelve of the number on each side, leaving a residue of twenty-four. Of these the first twelve who should answer to their names on being called were to form the jury. It was alleged, and indeed proved, that the names of several Catholic jurors had in some mysterious manner been withdrawn from the printed list, though the names existed in the manuscript panel prepared and signed by the sheriff. The jury actually empanelled and sworn was exclusively Protestant. The Lord Chief Justice charged very strongly and even passionately against the traversers, all of whom were convicted.

A new trial was moved for in the following Easter Term upon several grounds, including that of the mutilation of the jury list, and upon the general ground that the Chief Justice's charge manifested an undue bias against the traversers.

Mr. O'Hagan had been one of the counsel for Mr. Duffy, but, notwithstanding the strong desire of his client that he should address the jury on his behalf, Mr. O'Hagan, who was then but of seven years' standing at the Bar,[1] declined to occupy that position, and Mr. Whiteside spoke in defence of Mr. Duffy. On the motion for a new trial Mr. O'Hagan addressed the Court as counsel for Mr. Duffy.

It will be seen that, dealing very briefly with the general topics which had been fully presented by the counsel who had spoken before him for the other traversers, Mr. O'Hagan pressed upon the Court the arguments which had peculiar relation to the case of his own client.

[1] In the State trials of '48 retainers were sent to Mr. O'Hagan for the Crown by the Attorney-General, Mr. Monahan, but he asked him to take them back out of regard for Mr. Gavan Duffy, and his acquaintance with some of the other traversers. The Attorney-General did so, and then Mr. O'Hagan felt it to be his duty not to appear against the Crown, and so was out of these trials altogether. They were almost the only important public cases in which he was not engaged after 1840.

ARGUMENT.

I AM counsel for Charles Gavan Duffy, and I have to move, on his part, for a new trial in this case. I regret that the duty has not fallen to one more competent than myself; but circumstances have cast it upon me, and I shall not shrink from the attempt to discharge it faithfully. I shall not trouble the Court by reading the notice—it is substantially the same with those already read, and, in proceeding to open it, whilst I rely on all the grounds set forth from the beginning to the end, yet so much of what I had intended to say has been anticipated in the powerful and elaborate argument of my friend Mr. Whiteside, that I feel I shall best consult the convenience of your lordships and the interests of my client, by confining myself to the consideration of the evidence and the charge, as they bear peculiarly upon him. Authority and reasoning have been exhausted with respect to the question of the venue, the misnomer of the juror, and the extension of the trial at bar. On none of these matters shall I dwell at all; and, as to the jurors' lists, I shall only say, after the searching analysis of the affidavits which has been made by those who have preceded me, that if, in any case, it be important to exhibit justice to the country, not only as pure, but as above suspicion, in this it is emphatically so. For this, my lords, is a case which deeply affects the rights and interests of all classes of Irishmen; which involves the discussion of questions

and the settlement of principles vitally affecting our civil liberties. It is a political case, and in a country torn by political dissensions, it rouses strongly the feelings and the passions of hostile parties. And if error is confessed to have occurred in the preparation of the lists, whose character was necessarily to determine the purity or the foulness of all the subsequent proceedings—if that error be ascribed to fraud and contrivance, and if the absence of all fraud and all contrivance be not proved to demonstration, of what value is the verdict which has been given? Of what value is it, if those whom it meant to influence have reason to believe it without moral weight?

The prosecuting counsel boast that they have joined issue with Mr. O'Connell, and left it to a Court and a jury to decide whether his proceedings have been consistent with the law. But can they for a moment imagine that the decision will be of authority, which has been had at a trial under circumstances so very questionable, before a jury supplied by a panel from which so many qualified persons were unwarrantably and illegally excluded, and composed of men, one and all politically hostile to the accused? The aim of criminal justice ought not to be merely to obtain conviction, even where guilt exists; it should see that that conviction be not only right, but satisfying to the moral sense and honest mind of the community; and it fails of its highest function when those for whose example and improvement it is authorised to punish, are forced to believe that there has not been perfect purity in every step of its progress. Here, the existence of error, which may have done fatal mischief to the accused, is admitted by the prosecutor; and even if that error were accidental, men criminally charged ought not to suffer from it; but when the allegation is, that it was the production of fraud and not of accident, and when that allegation is not, as we

believe it is not, refuted by any sufficient proof, I pray your lordships to consider, having regard to the peculiar circumstances of this unexampled prosecution, and the momentous issues which hang upon your judgment, whether you will not best fulfil your high duty, and most effectually establish the confidence of the people in the integrity of the law, by granting another trial which may be had before a tribunal without taint and beyond impeachment? I shall not observe further on this subject; but my deep sense of its importance would not permit me to say less than I have said.

And now, my lords, avoiding the topics which have been discussed by others, I shall proceed to submit to the Court that my client is entitled to a new trial; first, because evidence was admitted for the Crown which ought to have been excluded; secondly, because whilst the evidence against him was submitted to the jury by the Court, the evidence offered on his behalf was not submitted to them at all; thirdly, because there was misdirection in the charge; and lastly, because the proof did not warrant the verdict. I submit, my lords, in the first place, that there was no legal evidence of the proprietorship of the 'Nation' newspaper. The evidence given was this: A person from the Stamp-office produced the declarations lodged there by the proprietors of the 'Freeman's Journal,' the 'Pilot,' and the 'Nation.' One of these bore the signature of Charles Gavan Duffy, and the Crown sought to prove that that signature was in the handwriting of my client. They failed to do so, and they then produced a certified copy of the declaration, and insisted that, under the statute, that copy, with the production of a newspaper, such as was described in it, was sufficient evidence to charge Mr. Duffy as proprietor of the 'Nation.' They relied on the strict statutable proof.

Judge Burton: On what proof?

Mr. O'Hagan: On proof under the statute merely, without any evidence of the identity of the traverser.

Judge Crampton: Was there no proof of handwriting?

Mr. O'Hagan: None whatever. As to some others there was, but none as to Mr. Duffy. Now, I submit that this evidence was not sufficient. At common law, of course, it would not have been so; but several statutes have been passed to facilitate proof of proprietorship of newspapers. Before the passing of the 38 George III., c. 78, in England, in the case of Rex *v.* Topham, 4 Term Rep., 127, the evidence offered was, that a copy of the publication charged had been purchased at the office of the defendant, that he had passed a bond to the Stamp-office, under the 29 George III., c. 50, and that he had several times made application there with respect to the duties payable on his paper. Lord Kenyon sent this evidence to the jury. Afterwards, by the 38 George III., c. 7, the necessity of proving the actual purchase of a newspaper was done away with. An affidavit was required to be lodged at the Stamp-office, and production of this, and of a paper corresponding with that described in the body of it, was made proof against the person who had signed it. Then came the 6 & 7 William IV., c. 76, which, in sec. 5, requires the lodgment of a declaration in lieu of the old affidavit, and then, in sec. 8, provides that

In all proceedings, and upon all occasions whatsoever, a copy of any such declaration certified to be a true copy under the hand of one of the said commissioners, or of any officer in whose possession the same shall be, upon proof made that such certificate had been signed with the handwriting of a person described in or by such certificate as such commissioner or officer, shall be received in evidence against any and every person named in such declaration as a person making or signing the same as sufficient proof of such declaration, and that the

same was duly signed and made according to this Act and the contents thereof; and every such copy so produced and certified shall have the same effect for the purposes of evidence against any and every person named therein as aforesaid, to all intents whatsoever, as if the original declaration of which the copy so produced and certified shall purport to be a copy, had been produced in evidence and been proved to have been duly signed and made by the person appearing by such copy to have signed and made the name as aforesaid.

And then the section provides, that, on the production of the certified copy, 'against any person having made and signed such declaration,' and of a newspaper such as is described in it, proof of the purchase of the paper shall not be necessary. On that section the Attorney-General has relied; and I submit that, according to its true construction, he has given no proof of the proprietorship of the 'Nation.'

What is the object of the Act? To facilitate the proof of publication. The Legislature had laboured by successive statutes to accomplish this, and the effect of the last has been to substitute for the affidavit signed by the defendant a certified copy of his declaration. But against whom is the certified copy made evidence? 'Against the *person named* therein.' Who is the 'person named' in the declaration, and the copy? This is a matter to be ascertained by proof, and the statute does not dispense with that proof. There must be something to lead the jury to believe that the traverser at the bar is the 'person named' in the declaration. It was never intended to make mere identity of name equivalent to identity of person; and the whole purpose of the Legislature is fully satisfied, without the necessity of supposing that any such absurdity was contemplated. It manifestly aimed at removing the difficulty which might sometimes arise in producing and proving declarations of proprietorship, and in showing the actual purchase of a paper;

and it provided that, as against the 'person named' in the declaration, such evidence should not be necessary. But it did not, and does not, relieve the prosecutor from the trouble of showing that he wishes to impose a criminal responsibility on the man who has signed the declaration, and on no other. This is a penal Act, as against the press, and largely increases the power of the Crown. It substitutes a mere copy for the original, which is lodged. It requires no proof of the station or employment of the commissioner who certifies. It dispenses with evidence of the declaration, or of the purchase of the journal. These are great facilities to the prosecutor, and they are surely not to be extended one jot beyond the limits prescribed by the Act. In this case I submit that an attempt is made to push them beyond those limits. The counsel on the other side assert that no proof of identity—not the very slightest—is necessary to be given. Although the 'person named' is the person to be charged, they say that they are not bound to offer any evidence that the person charged is the 'person named.' They insist that, finding the name of my client in the certified copy, and the same name in the indictment, they are warranted in requiring a jury to determine, without more, that the traverser described in the one case is the proprietor described in the other. And the result of their argument is, that if there be five or five hundred men named Charles Gavan Duffy in this Court, the certificate will be evidence to charge them all with the alleged offences of the 'Nation' newspaper, and to charge them equally; for the sole proof is that the name of the defendant is identified with that of the declarant, and this will equally apply to all. One of your lordships, Mr. Justice Crampton, perceived this notable conclusion, and put it strongly to the counsel for the Crown. The Solicitor-General did not shrink from it; he said that the proof would be, *primâ facie*, applicable to a number of persons,

all of whom, save one, must be entirely innocent; but he did not advert to the fact, that the statute makes the evidence 'sufficient,' and that if the Crown have a fancy for convicting any one of the five hundred individuals having the same appellation, it need only select whom it pleases, and the proof against him will be complete. Is this just or reasonable, or consistent with the plain words and unstrained meaning of the Act? Is any one safe if such a construction be adopted? Can any one of us be assured that at some moment the unhappy accident of his christening may not convert him into a popular editor, thundering through the columns of a journal which he never saw, and responsible for conspiracies, seditions, and treasons which it never entered into his imagination to conceive? At the trial, when we made the objection, Judge Perrin, declaring himself not satisfied, suggested the propriety of supplying the deficient evidence. Another member of the Court was inclined to call in aid some proof which had before been given; but the Crown chose to rest on the mere statute.

Cases were cited to show that this was sufficient,—Rex *v.* Hunt, 31 State Trials, 375, and Mayne *v.* Fletcher, 9 B & C., 782. But it will be found, that in neither of those cases was the question raised, discussed, or decided. In the first, there was no reference to identity at all; and, in the second, the point mooted was whether, under the 38 George III., c. 78, there should have been proof of purchase of the newspaper. They do not touch the case before the Court, and I submit that, the Crown having relied merely on the statute, we are entitled to say that their proof fails, and that they cannot hold the verdict which is founded on it. I know not whether any attempt will now be made to spell out inferential proof of identity from circumstances or description, but, if there be, I beg the Court to remember that such proof is not to be favoured on a criminal trial. Judges, it is true, are

latterly disposed to relieve parties from the onus of proving identity (Phillipps's Evidence, ii. 141), but this is only in civil cases, and the distinction between them and cases like the present in this respect is broadly taken by Lord Ellenborough, in Hennet *v*. Lyon, 1 B. & Ald., 182 (counsel read the case). The principle of the criminal law is well stated in 1 Leach, 327, Rex *v*. Brady. The charge was perjury, and the proof of identity was very strong; but the Court said :—'There is no instance where an indictment for perjury has been supported without direct and positive proof that the party took the oath on which the perjury is assigned, or where the evidence of the fact has been attempted to be supplied by inference from evidence of the other circumstances of the case.' I can see no reason why that principle should not be applied to the case of my client. The only shadow of evidence alluded to in the argument was that of Mr. John Jackson, who twice spoke of the traverser from his notes as 'Mr. Duffy, of the "Nation."'

Judge CRAMPTON: Where does that appear?

Mr. O'HAGAN: The evidence is not reported, but it is on your lordship's notes, and the Solicitor-General recollects that it was so. The Crown did not rely on this evidence. It was not put for consideration to the jury, and the decision was had on the strict statutable proof. And it was properly so, for this evidence was utterly worthless—first, from its own nature, and, next, from the admissions of the witness with respect to his mode of reporting and his means of knowledge. He did not describe the defendant as the proprietor of the 'Nation,' or as the editor of the 'Nation'—he called him Mr. Duffy, of the 'Nation'; and it is plain as light, that this could not identify him with the proprietor of that paper, who had signed the declaration.

There may be—there often are—two men of the same

name connected with the same journal, and both of those men may be popularly described as 'of' the journal, though only one of them is the responsible proprietor. The other may be an editor or a reporter, yet he will be said to be 'of' the paper; just as much as the individual who has signed the declaration and is the person intended to be charged. Suppose there are two gentlemen named Duffy connected with the 'Nation'—two cousins, or a father and son—bearing the same name—the one proprietor, the other not; they are both 'of the "Nation."' What an outrageous thing it would be to fix the one who is not in any way responsible with the whole imputed guilt of the journal, because a flippant witness describes him as Mr. Duffy, 'of the "Nation."' In this city a paper is published—the great organ of the supporters of the Union—pre-eminent in circulation, ability, and influence amongst the Conservative journals—and it is understood that two gentlemen of the same name, near relatives, are connected with that paper. One of them is said to reside usually in London, and the other in Dublin. Now if, during some of the agitations which have prevailed on the other side, during the last dozen years, while a hostile Government was in power, Mr. Sheehan, of Dublin, had been charged as conspiring, with multitudes of lords and gentlemen, to produce changes in the laws, by a demonstration of physical force at Hillsborough, or elsewhere, and, by intimidation and so forth, to affect the decisions of the Legislature, would not the London Mr. Sheehan have thought it very hard if he had got up of a morning, and found himself an unconscious conspirator, because Mr. John Jackson had proved that 'Mr. Sheehan, of the "Evening Mail,"' had been doing certain acts, and speaking certain speeches in Ireland? It would be most dangerous and most unfair, in such a way, to eke out proof of criminality against any man. But, independently of

this, Mr. Jackson's evidence was utterly worthless. He took notes, he swore, not fully even when he was present at the Association, but only 'as a summary for reference.' He took them sometimes from his own observation and sometimes from the notes of others made in his absence; he could not distinguish between the former and the latter; and, finally, he admitted that he could not be responsible for the accuracy of those notes at all. It was manifest that no reliance could be placed upon such testimony, and accordingly the Crown did not press it as any support of the case against Mr. Duffy; it was not offered to the jury in the charge, and the statutable documentary proof was that on which the prosecutor rested and the Court ruled. The evidence may, therefore, be put out of the question; and, if so, I insist that on the sound and reasonable construction of the Act there is not a particle of proof to fix my client with the responsibility sought to be imposed upon him.

I submit, my lords, in the next place, that the other newspapers, the 'Pilot' and the 'Freeman,' were improperly admitted in evidence as against my client. They were admitted in proof of facts that were not proved otherwise, as, *e.g.*, to prove the speeches of Mr. O'Connell at Mullingar, at Longford, and at Mallow. In all these cases, and in others, the Lord Chief Justice read the speeches, as actually having been spoken, and put it so to the jury, against all the traversers, though there was no proof of them, save the mere publication in the papers. I submit: First, that, even as against the publisher of a newspaper himself, every statement of fact in it is not to be taken as a confession, binding on him in a criminal case: The force and effect of an admission must, of course, depend upon the circumstance under which it is made. In many cases, it will be evidence of the strongest kind, if clearly

proved; in some, *it amounts to little.* (Phillipps on Evidence, i. 108.) I would say that, in this case, it can amount to nothing at all. A man is bound by an admission when he makes it, professing to know what he admits, and to make it on his personal responsibility. Thus, an admission in a receipt, or in a deed, or in an answer, binds the person making it. But, consider the circumstances of the proprietor of a newspaper. Ten thousand facts may be mentioned in a single number of it, of which he has no cognisance, and can have none, and professes to have none. His contributors, and reporters, and correspondents, all state matters, of which he is never supposed to know anything—of which all men are aware he knows nothing—and is it reasonable to make each of these statements an admission of his? And not only an admission, but one absolute and conclusive upon him on a criminal trial? The proprietors of the 'Times' and the 'Morning Chronicle' have their emissaries ranging through the whole earth; they have reporters in every court of law and every police-office in London, and hosts of people feeding their journals with the current news of the country. Are they to be personally bound, as admitting that every statement is true—that every speech was spoken which appears in their columns? Does not that seen monstrous? Yet the principle has been acted on throughout the charge of the Court, and reports and documents in newspapers have been sent to the jury, not as mere publications, but as binding admissions of facts otherwise wholly unproved, against the proprietors of those newspapers, and against all other traversers, who had no connection with, or control over them, and most probably no knowledge whatever of their contents. I submit that such a course was not warranted, even in relation to the proprietors, by any authority or any reason. Decisions of courts, in derogation of the common law, have made a pub-

lisher responsible for libels, whether he had personal knowledge of their publication or not. Those decisions proceeded upon considerations of supposed public expediency; but they are not to be extended, and a man's responsibility for a libel injurious to his neighbour is a totally different thing from the responsibility now sought to be put upon him, as admitting the truth of every narrative contained in his paper. I know no case in which the latter responsibility has been imposed by any court. If there is, let it be produced: if there is not, will your lordships make the precedent?

Judge PERRIN: I think the argument goes to this extent, that, whether the proof of proprietorship was statutable only, or by purchase of the paper, the evidence will be equally inadmissible.

Mr. O'HAGAN: Certainly, my lord. I contend that the mere fact of proprietorship, however proved, could not authorise the Court to send statements of facts contained in the journals to the jury as personal admissions of those facts by the proprietor.

Judge PERRIN: That is an arguable position.

Judge CRAMPTON: Would you say that if the statement, instead of being printed, had been written in a letter, and that letter had been lithographed, as is sometimes done in mercantile houses, it would not have been an admission of the facts stated?

Mr. O'HAGAN: There is a wide difference between the cases, and I thank your lordship for the question, as a reasonable answer to it will sustain my argument. If a man sends a letter to another, in his own writing and with his own signature, making admissions of facts within his knowledge, or professedly within his knowledge, those admissions ought to bind him. The lithography does not alter the case, for the sending of the lithographed letter is

a personal act, importing personal responsibility just as much as if it were written. But the newspaper proprietor neither assumes, nor is supposed to assume, any personal responsibility for the truth of the facts which his columns narrate, or for the correctness of the reports which are furnished by other persons.

Judge BURTON: What was the nature of the facts in the case?

Mr. O'HAGAN: Reports of speeches delivered at distant places were made evidence of the fact that those speeches had been spoken; and not only this, but the mode in which they were received, by cheering and otherwise, was stated to the jury as actually proved, because it was described in a certain way in the newspaper.

I insist that, even as against the proprietor, it would be utterly unreasonable and unjust to hold those reports and descriptions binding as proofs of fact; but, allowing that they could be so considered, how is it possible to contend that they should be so held as against third persons? How can Mr. Duffy have facts proved against him on the mere statement of a reporter of the 'Pilot'? Or because the 'Nation' alleges occurrences to have taken place, is the truth of that allegation to be assumed against Mr. Barrett? Are the assertions of anonymous contributors to these journals, over whom Mr. O'Connell had no control, of whose existence he was unaware, whose productions he never saw, to charge him in a criminal case, as evidence of facts of which there is no other evidence whatsoever? The traverser has no power to cross-examine the witness whose allegations are relied on by the Crown, to test his credit or inquire whether his whole story be not a mere figment of the imagination. He is not before the Court, and how, with any show of reason, can his testimony be admissible for the purposes for which it has been used?

There is no authority to justify its admission: all authority is the other way. In Hardy's case (24 State Trials, 425), the rejection of Thelwall's letter, and the grounds on which it was rejected, tell powerfully for us, and the principle, as stated in Phillipps on Evidence, 212, is distinctly in our favour.

But further, I contend that the 'Pilot' and the 'Freeman' newspapers have not been proved in such a way as to make them evidence at all against my client, Mr. O'Connell, or any of the other traversers, save their own proprietors respectively. The 'Nation' will be in the same position in relation to all the traversers, except its own proprietor, if any proprietorship has been legally established. The statutable proof under the 6 & 7 William IV., c. 76, has alone been made as to all these journals; and as that Act only aims and proposes to facilitate proof against the proprietors themselves—'the persons named in the declaration'—and as it is not to be extended to cases which it does not expressly contemplate—when the object is to affect persons not such proprietors and not so named, the old proof required by the common law ought to have been given.

But, next, I insist that, as to my client, no publication of the 'Freeman' or the 'Pilot' has been proved which can affect him in any way, because there is no evidence that either of those papers was ever circulated at all, or ever reached, or could have reached, his hands, or come within his knowledge. A copy of a paper is produced from the Stamp-office in the hands of the officer, and there the proof rests. That copy, at best, merely shows that it was lodged, and that there was a publication of it, *quoad* the person with whom it was deposited. It does not show or give any legal ground for assuming that it was ever published to any other person, or that any other copy ever

had existence. It furnishes no jot of evidence that the paper produced ever went into circulation, or that any one of the traversers, save the individual proprietors, ever saw or could have seen it. My lords, that must now be taken as the law of the land, for it has been so held after solemn argument by the Queen's Bench in England. In the case of R. *v.* Amphlit, 4 B. & Cr. 35, there is an intimation of the opinion of the judges that, though the lodgment at the Stamp-office may prove a publication to the officer there sufficient to sustain an action for libel, it does not prove a publication to any one else. But in a much later case, Watts *v.* Frazer, 7 Ad. & Ell., 223, the question was broadly raised and expressly decided. There the plaintiff and defendant were both publishers; the action was for libel, and the defendant sought to give in evidence an attack made upon him by the plaintiff's journal, which had provoked the publication complained of. The statutable proof of proprietorship was offered, and a copy of the paper of the plaintiff lodged at the Stamp-office was put in. It was objected by Sir J. Campbell and Sir F. Pollock, first, that as the statute only provides a peculiar mode of proof against defendants, when the object was to prove proprietorship in the plaintiff, it ought to have been proved as at common law; and next, that the production of the single Stamp-office copy furnished no evidence that the paper ever had been in circulation, or could have come to the defendant's hands. And Lord Denman, on a new trial motion, after an elaborate argument, gave judgment for the plaintiff, in which he says: 'I thought that the newspapers could not be received in evidence without proof that some other copy had been issued than that deposited at the Stamp-office, with which it appeared that the defendant could not have been acquainted; and no evidence was given of any duplicate having been published.

Then, a question is raised, whether, in the absence of direct proof, it can be inferred from the printing of one newspaper, which was not circulated, that another, exactly corresponding with it, was printed, which might meet the defendant's eye. The same question arises as to the book which was offered in evidence. We think that the inference cannot be drawn, and that some evidence should have been given of the publications having actually come abroad. We are not warranted in assuming that the usual numbers of a publication were in fact issued at any particular instance.' Now, my lords, if that be law, is it possible to contend that these newspapers have been properly left to the jury to prove matters of opinion and matters of fact, when it has not been shown that they ever were in circulation, or that any portion of their contents could ever have been communicated to any one of the traversers? The entire of the proof is confined to this: that certain printed sheets were placed in the hands of the officer who produced them, and there is not the least warrant for the inference or assumption, that any other being in the world, save himself and the person by whom they were so deposited, at any time saw those sheets or any similar to them, or knew or heard of their contents. If, instead of placing a copy of his paper in the Stamp-office, Dr. Gray had locked it in his desk, where it remained until the moment of its production on this trial, would any one venture to contend that Mr. O'Connell or Mr. Duffy, who had not known of its existence at all until it was produced, could, with the shadow of justice, be made responsible for its speculative views or its admissions of fact? Yet that case would not be in any way different from the present.

Judge Burton: Was this objection made at the trial?

Mr. O'Hagan: I believe not, my lord; but your lord-

ships know that, in Holt's case, the Court declared they would always be ready at any time to do justice to an accused person.

Judge Perrin: I apprehend you as urging the objection not to the admissibility of the evidence, but to the mode in which it was left to the jury.

Mr. O'Hagan: That is exactly my view. The evidence was admissible against the person who lodged the paper, but I contend it should not have been stated in the charge as affecting anybody else.

An attempt may be made to argue that the newspapers and their statements were adopted by the Repeal Association and the traversers, as members of it; but if I am right in my last position, that argument is wholly untenable. There can be no adoption where there is not knowledge, and I insist, with confidence, that no knowledge or possibility of knowledge of these newspapers or their statements has, in any way, been proved against my client.

It is my duty, in the next place, to complain, on behalf of Mr. Duffy, that not only was evidence—which ought not to have been admitted—allowed to be given against him, but that whilst the illegal evidence went to the jury, and was presented in its most serious and formidable parts at the very close of the charge of the Lord Chief Justice, not one particle of the evidence offered in his favour was even alluded to in that charge. My lords, that evidence we deemed material when we offered it. We thought it most material as qualifying and explaining the evidence of the Crown—as exhibiting the condition of public questions and the tendencies of the public mind, during the progress of the events which gave birth to this prosecution, and so enabling the jury fairly to estimate the views and the principles, the feelings and the aims, of those whom the

prosecutor sought to brand, by construction, as conspirators. Paper after paper was produced on the other side, and carefully culled extracts were read to demonstrate my client's guilt. From all, or nearly all of them, we read passages for the purpose of leading the jury to a conviction of his innocence; but, when a fortnight had elapsed, and the readings on both sides must have been well-nigh forgotten, the most pungent selections of the Crown were re-read by the Lord Chief Justice, and left ringing, fresh and strong, in the ears of the jury, just before they went to find their verdict, whilst not an allusion was made tending to revive their recollections of the evidence of the traverser, or to remind them that any evidence had been given for him at all. We had thought it of consequence to put side by side with the article entitled 'The March of Nationality,' which insists strongly on the necessity of a native Parliament, documents inserted in the same paper, showing that the opinions of my client and the other traversers are largely shared by some of the best men in the British empire. We read the emphatic avowal of Mr. Sharman Crawford, that he deemed a local legislature on federal principles essential to the salvation of Ireland. We read the solemn manifesto of the Irish members, headed by Thomas Wyse, the scholar and philanthropist, and David Ross, who worthily represents the capital of Ulster, complaining of many of the grievances against which my client has protested, and earnestly warning the people of England that those grievances are intolerable, and must be put an end to. We sought to show, and we did show, that men beyond all impeachment, differing more or less in their practical views, had shared the sense of national wrong, the shame of national abasement, the aspiration for national redemption, which glow and burn through the columns of the 'Nation.' The testimony which we used was

that of the Crown itself—the very document on which it claimed a conviction, and which were in proof for us, where they were favourable, and against us, where they were adverse. We wished to put it to the jury whether, taking all those documents together, they could hold our client constructively a conspirator; and we complain that, whilst to what was hostile their attention was drawn strongly, to what was favourable it was not drawn at all.

Judge Burton: Were those documents in evidence?

Mr. O'Hagan: Yes, my lord, they were read by us and regularly entered.

Further—Mr. Duffy's appearance at a few meetings of the Repeal Association was made the ground of accusation against him. His answer was—'The object of that Association in my opinion was good—its constitution was legal—its proceedings were honest—and its principles were calculated to maintain peace and order in their working, and, in their result, to promote the permanent welfare of the country.' And to prove all this, he read the declaration of political faith and practical conduct published by that Association in his paper of the 10th of June, 1843—a paper produced and relied on by the Crown. He asked the jury to consider that declaration, and find in it, if they could, anything which a good citizen or a loyal subject need blush to adopt or shrink from avowing? He demanded of them, as a fair man speaking to fair men, to take that public proclamation of a great public body as the true exposition of its real purposes, and of his purposes in giving it his support, and not to allow sneers and sarcasms and insinuations from any quarter to impress them with a belief that it had other and hidden purposes—that its lip-loyalty concealed rankling sedition, and its plausible professions were but the cloak for foul conspiracy? We read that declaration—a document of great value to us,

as we humbly conceived; but weeks passed on, it was lost to the minds of the jury in the crowd of facts and statements which pressed upon them, and there was not the least reference to it in the charge of the Lord Chief Justice.

Now, my lords, even if all the evidence had been clearly put, and equably balanced, the difficulty of the jury must have been great; but when one side only was presented, and the other allowed to remain wholly out of view, was it possible that the result could be satisfactory? It is very notable that in no part of the charge was any, the smallest, allusion made to any proof for Mr. Duffy. On the contrary, in one portion of it, the Lord Chief Justice speaks in a few sentences of the evidence for the traversers, the speeches and addresses which had been proved for them, and he fixes those speeches and addresses as having been spoken and published from the year 1840 till the year 1843, and declines to dwell upon them in detail, because the Solicitor-General had admitted that, from 1840 till 1843, no accusation was attempted by the Crown. Now, the proof offered for Mr. Duffy was all as to the year 1843, and as to the months of June and August of that year; so that this reason would not apply to it at all, and an observation made by Mr. Justice Crampton as to the 'substantial statement' of the defendant's proofs does not meet the objection. The effect of the statement palpably was, to induce the supposition that no evidence had been given for Mr. Duffy as to the year 1843.

Judge Crampton: You have not adverted to a passage in p. 56 of the charge.

Mr. O'Hagan: I shall read it. 'I have here before me the instructions for the appointment of repeal wardens: I am stating substantially the document to you, and I am speaking under the correction perfectly of the gentlemen

of the other side,[1] to see whether I do not state correctly the several documents as I go along; and I shall be very much obliged to them, if they find in any particular I fall short, or mistake, or misstate the documents that occur, to interrupt me.' My lords, we do not complain of the misstatement, or short statement, or mistake as to any of the documents, but of the total omission of any reference to the documents which were offered on behalf of my client. There is another observation. The Lord Chief Justice, after telling the jury that, if they were not satisfied beyond any reasonable doubt, they should not convict, goes on to say:—'The onus is on the Crown, and that is another reason why I pass over without more particular detail the evidence given on behalf of the traversers.' I submit that this was no good reason for the course adopted; if it were, a criminal judge might always content himself with stating the evidence for the prosecution, and leaving that for the defence without a word of observation. In all criminal trials, the onus is on the Crown just as much as it was in this; but if, in all, on that account, the detail of the prisoners' evidence was omitted to be given, what monstrous verdicts should we have! How could jurors, who, even with the assistance of the sages of the law, find it so difficult to collate and analyse conflicting evidence, to reduce its confusion to anything of lucid order, and reach a knowledge of the truth—how could they do their duty or accomplish justice, if judges should withdraw the aid of their cultivated reason and ripe experience in the estimate of the value of the testimony given on behalf of a prisoner! But, especially, how could they be safely trusted to attain a right conclusion,

[1] This strange phrase in the mouth of a judge, 'The gentlemen of the other side,' was much commented on at the time. Mr. O'Hagan's instant reading of the passage which contained it, in answer to Judge Crampton's remark, caused the Chief Justice to look somewhat confused, and created considerable amusement in the court.

if the judge should not place the prosecutor and the prisoner on an equality, by leaving the evidence of both unstated, but should aid the Crown, which ought to bear the burthen, by repeating the testimony offered on its behalf, and trust the testimony on the other side to the miserable chance of preservation in the confused and doubtful memory of exhausted men, unaccustomed to inquiries in courts of justice, and untrained in the art of investigating facts and marshalling them in the mind for future reference!

I submit that the principle of judicial conduct enunciated in the passage I have read is novel and dangerous, and capable of being turned to very ill account. I submit that the charge which was framed on such a principle did not present the evidence to the jury in my client's favour, as he was entitled to expect that it should be presented. I take up the phrase of the Attorney-General; I say that this case should be dealt with as any other case; and I ask that the same course which is habitually adopted on all our circuits towards the meanest men accused of the foulest offences, shall be pursued in this High Court, though the crime charged be political, and the Attorney-General the prosecutor; I ask that at least the same fair and full exposition of the defendant's evidence shall be made to the jury when it is sought to mesh him in the wide and tangled net of constructive conspiracy, and to reason and intend and infer away his liberty, as would be his right, if the testimony against him were direct and positive, and fixed him with the deadliest crime known to our law. I ask that the measure of justice which should be meted to every accused man may be meted to my client; and that it may be, I pray a reinvestigation of his case.

I have further to submit to the Court, that Mr. Duffy is entitled to a new trial, not merely because of the admission of evidence which should have been rejected, and the want

of all reference in the charge to the evidence adduced on his behalf, but also upon the ground that the Lord Chief Justice misdirected the jury. His lordship's observations as to my client are brief, and I shall read them:—

It is not denied that Mr. Duffy was a member of the Association; it is proved, indeed, by various documents, and not attempted to be denied, that Mr. Duffy was the proprietor of the 'Nation' newspaper, which more or less was in connection with the Association. He is accused of having entered into that common conspiracy so often detailed to you; and though he is not proved to have attended any of those great meetings, yet there are documents brought in evidence against him for the purpose of showing the part he was taking in, what is alleged to be, the common plan of these alleged conspirators.

There are three propositions stated to the jury, as proved and not denied; first, that Mr. Duffy was a member of the Association; next, that he was proprietor of the 'Nation' newspaper; and, lastly, that that newspaper was in connection with the Association. As to the first, the proof was, not of Mr. Duffy's membership, but of his presence, on some few occasions, at the Association. I shall not, however, cavil upon this; the value of the fact I shall consider by-and-by. In stating the second proposition, I submit that there was a misdirection. Proof was offered of Mr. Duffy's proprietorship, and that proof was admitted by the Court, but in opposition to the arguments and strenuous protest of the defendant's counsel. So far from admitting this fact, which founded the entire case of the Crown, we contended that no legal proof whatsoever had been given of that fact, and that it ought not to go to the jury. And when our objection was overruled, we prayed that a note of it might be taken. It was, therefore, a mistake of the Lord Chief Justice to assume that the defendant admitted either the force of the evidence of the prosecutor, or the

position which that evidence was offered to substantiate, and when he put it to the jury that there was no controversy upon this, which was one of the cardinal questions of the trial, he was in error, and there was, to that extent, a clear misdirection. No doubt, the evidence was given, in spite of the resistance of the defendant's counsel, and his lordship was bound to state it; but there is a vast difference, as they affect the minds of jurors, between proof by the Crown and confession by the traverser.

Judge CRAMPTON: Mr. Whiteside calls himself counsel for the proprietor of the 'Nation.'

Mr. O'HAGAN: But the note of our objection was taken by your lordships, and was an express denial that any legal proof had been given of the fact.

In the next statement of the charge, that the 'Nation' was 'one of the papers which more or less was in connection with the Association,' I submit that the effect of the evidence was not rightly put to the jury. The meaning of that statement was—it could have operated to convey no other—that, between the Association and the paper, there was a connection, more or less, fairly leading the jury to consider the publications in the one and the acts of the other, as having a certain mutual relation and dependence. Now, I complain that the exact condition of the facts, as they appeared in evidence, was not explained, and that this statement was not calculated to make the jury accurately apprehend what that condition was. It was plainly of the last importance to all the traversers, and especially to Mr. Duffy, that there should be no misconception on this head—that the fancied connection should make him responsible for the conduct of other men, and other men for his; and yet the charge, I respectfully submit, was calculated to lead the jury to fancy such a connection, and impose such a responsibility. The evidence established no connection

whatsoever in any intelligible sense of the term. The 'Nation,' so far as has appeared, was a paper published in perfect independence of the Association; nay, more, it was declared not to be the Association's organ, and it advocated opinions, as I shall show, opposed to those of Mr. O'Connell, the great founder and chief of that Association. All this appeared in evidence, yet nothing of this was stated to the jury. The 'Nation' was not one of the journals named in the instructions to the repeal wardens, which were read in evidence for the Crown, and on which it rested mainly its case against the newspapers. But it did appear, on the cross-examination of John Jackson, that Mr. O'Connell publicly, at the Association, 'corrected the error that this or any other newspaper was the organ of that body.' And again, from the 'Freeman's Journal' of August 23, produced by the Crown, there was read for the traversers a passage in which Mr. O'Connell said, in reference to a letter from Mr. M'Kenna, 'He was anxious to correct an error into which the writer seemed to have fallen. He supposed that the "Nation" was the organ of the Association. There were many Liberal newspapers that published their proceedings, which the Association respected; but no paper was the organ of the Association, nor was it to be held responsible for anything which appeared in any newspaper.'

Judge Crampton: In what page of the report?

Mr. O'Hagan: The quotation is contained in the ample report of Mr. Duffy, of Anglesea Street, which has the documentary evidence fully stated. Surely, my lords, when the question was, how far Mr. Duffy was to be held responsible for things done and words uttered, hundreds of miles away, by members of the Association, and how far those members were to be affected by articles of the 'Nation,' which they had never seen, it was not too much to expect that evidence so strong and cogent as this should have

been stated to the jury. It was offered for the traversers to meet the very case of connection set up by the Crown, and that connection ought not to have been assumed to exist. The accused had a right to have their own explanation of their own views and purposes considered not in parts, not so far merely as it operated injuriously against them, but altogether and in its entire bearing and effect. There is not evidence of this connection. Even if—which was not proved—the paper was purchased sometimes by the Association at the request of individual members, did this establish a 'connection' between them? Is a man or a society to be held 'connected' with every journal which may be purchased by him or them? Can such a purchase found a right in the Crown to make the acts of the buyer and the seller reciprocally imputable to each other for crime, and especially when there is plain, public, distinct, unequivocal, and reiterated proclamation to all the world, that the one refuses to be responsible for or identified with the other? I say, that when the Lord Chief Justice stated the existence of a 'connection' between the paper and the Association, it was necessary to the right discharge of their duty by the jury that they should have been told of the nature and extent of that connection, if any could be said to exist, and of the evidence of the traverser tending to show that the journal was in no way the organ of the body, and that neither could be fairly held accountable for the doings of the other. I contend that this broad and unqualified statement of 'connection' more or less, without a word of reference to the explanatory testimony, was calculated to predispose the minds of the jury too much to the admission of a belief in the existence of the alleged conspiracy, and that there was, in the way of putting this part of the case, adopted by the Court, a substantial misdirection.

Moreover, I submit, that in the commentary of the Lord Chief Justice on one of the articles which he read from the 'Nation,' 'The Crisis is upon us,' there is another and most serious misdirection. After reading the first sentence, which declares the union to be 'not merely an unjust and iniquitous, but an illegal and invalid act,' his lordship proceeds: 'Is that or not in unison with the sentiments of Mr. O'Connell to the thousands assembled—The Union is void?'—That mode of questioning the jury was calculated, I humbly conceive, to lead them from the consideration of their real duty. Identity of sentiment, even if it be erroneous, even if it be grossly and mischievously erroneous, does not constitute the crime of conspiracy. Identity of sentiment might exist between Mr. O'Connell and the writer in the 'Nation,' as to the invalidity of the Union, and yet they might be no more conspirators than if, on that subject, their opinions had been absolutely opposed. It is an agreement to commit a crime which constitutes the offence charged against the traversers, and, in putting the question whether the 'Nation's' declaration was in unison with that of Mr. O'Connell, the charge would appear to have abstracted the attention of the jury from the real and the only proper subject of investigation. But more than this—In a subsequent portion of the same article, it is said, 'The leaders have answered, and the responsibility is upon the people. The Rubicon has been crossed by the promulgation of a plan for the reconstruction of an Irish Legislature.' The Lord Chief Justice read this, and then went on to observe, by way of explanatory comment—'Taking it into their own hands entirely, without the assistance, advice, or co-operation of King, Lords, and Commons, as by law established.' My lords, I submit that that observation should not have been made—that it was in no way warranted by the passage to which it had reference, or by

the general evidence in the case. That observation involved a grave charge from the bench of justice against my client, and was calculated in the highest degree to affect the jury unfavourably towards him. How was it justified? The very 'plan' to which the writer had adverted is set forth in the *charge* (p. 72), and concludes by a distinct declaration that it is to be carried into effect '*according to recognised* law and strict constitutional principle.' Such law and such principle do not authorise the 'taking it into their own hands entirely.' On the contrary, the law and the constitution dictate the course which shall be pursued in the accomplishment of legislative change; and there is nothing, not a word or syllable, in the entire of this article which seems to me to warrant the imputation that the writer contemplated the adoption of any other course. My client, an accused man, was entitled, not merely to a fair, but to a favourable and benignant construction of the sentiments imputed to him, and I cannot understand how this reference to a plan which professed to seek its realisation only according to the law and the constitution, could properly be submitted to the jury as involving him in guilt, by showing that he would approve of the conduct of any persons who should take the law into their own hands, and thereby trample on the constitution. I say, with great respect, that the text in no degree justified the comment.

I submit, further, that there was nothing in the evidence to authorise the statement that the writer in the 'Nation' meant to have the Irish Legislature reconstructed without the assistance, advice, or co-operation of the King, Lords, and Commons. In the article itself there is not a hint at such a purpose, and should it be imputed if there is not? But, besides, there was distinct evidence that, at several of the meetings called to promote the reconstruction of this national parliament, petitions to the Lords and

Commons were actually prepared and adopted. Mr. Bond Hughes proved that such a petition was adopted at Mullaghmast; the petition of the Clontibret meeting was actually in evidence. Can it be said that when such testimony had been given, when the plan of which the 'Nation' spoke approvingly declared the sole reliance of its framers to rest on the law and the constitution, and when that declaration was thus verified in the conduct of the people—can it be said that the Court, overlooking all this, should have put it to the jury that the traversers intended to set at naught the established institutions of the realm, and carry matters *manu forti*, 'taking it in their own hands'—contrary to every law that is recognised and every principle that is constitutional? This would have been a strong statement from the Court under any circumstances—a statement necessarily calculated, coming from such high authority, and with such unquestioning certainty of tone, to impress the jurors deeply, and greatly to press on the accused. No man can say how far it may have gone to affect the verdict, and if I am right, as I believe I am, in asserting that it was not sustained by facts and evidence, I ask your lordships whether that verdict should stand.

It is the law, as established by all the later cases, that if evidence is improperly admitted, or if there is a misdirection, the Courts will not speculate how far the finding may be right or sustainable (Baron de Rotrea *v.* Farr, 4 Ad. and El. 53; Crease *v.* Barrett, 1 C. M. and R. 919). On these authorities, if I have shown, as I conceive I have, a clear misdirection, we are entitled to a new trial.

I have next to submit to your lordships that the evidence against my client does not support the verdict. 'Perhaps (says Sir William Russell) few things are left so doubtful in the criminal law as the point at which a combination of several persons in a common object becomes

illegal.' (2 Russ. on Crimes, 675.) And I do conceive that this is the case of all others in which an advocate is justified in pressing every available point on behalf of his client, and in which the Court ought to be anxious to receive any suggestion for the prevention of injustice, through the operation of a law which is so doubtful and ill-defined, and which may be so oppressive to innocence and so perilous to liberty, as the law of constructive conspiracy. What proof was offered of any one of the charges against Mr. Duffy? His case is peculiar, and needs to be considered separately, and apart from every other. I shall endeavour to analyse the testimony against him, and to demonstrate that it cannot be held to justify his conviction. My lords, to Mr. Duffy the great mass of the general evidence had no direct or personal application whatever. Not a single speech is proved to have been spoken by him during the nine long months through which the indictment spreads its vast proportions. Though the prosecutors had their reporters abroad at every meeting, with ears greedy to catch each sentence that could be tortured by ingenuity or exaggerated by eloquence into an expression of disaffection and discontent—though they searched, with wonderful industry, through the columns of the newspapers, to discover any hasty observations that might be paraded in a count, or read by an officer, to prejudice the accused; not a word or a syllable have they been able to charge as uttered by Mr. Duffy, on which the slightest imputation of criminality can be attached. Further, at not one of the monster meetings, of which so much use has been made against the other traversers, does he appear to have been present. He did not, and does not, believe that those assemblies of the people, convoked to declare opinion, and demand a redress of grievances, had the least taint of immorality or illegality upon them—he did not abstain from attending them because

he conceived that to attend them would have been, in any degree, to compromise his character as a man respecting his country's laws, and seeking its improvement; but there is the simple fact—at not one of these meetings was he present, and in all or anything that was spoken and done at them he had no sort of participation. He never saw the banners, he never heard the music, he never mingled with the crowds which have so often been described by the witnesses for the Crown:—and whilst those fervid and powerful speeches which have been read in this Court were thrilling the congregated thousands through all parts of the kingdom, he was resting in his home, enjoying the quiet which his habits have made dear, and the condition of his health has rendered necessary to him. Even if there were impropriety in holding multitudinous meetings of peaceful citizens, preserving order, avoiding outrage, gathering and dispersing without injury to any human being, and becoming offensive only when they became powerful—only because they exhibited an energy and organisation of the popular sentiment calculated to make their claims respected—even if Mr. O'Connell and his friends were not justified in adopting that course which has been adopted successively by every party in the State having the opportunity and the means of adopting it, whenever a political object was to be achieved to which the demonstration of the will of the masses might be made conducive, —still the evidence charges Mr. Duffy with none of these things, and we must look elsewhere for the grounds of the verdict against him.

They seem to be two, and two only—his attendance, on a few occasions, at the Repeal Association, and certain articles in the 'Nation' newspaper. If those grounds justify the verdict, it ought to stand—if they do not justify it, it is a bad verdict. Let us take them severally. I have numbered the meetings at which Mr. Duffy is proved to have

appeared. They amount, I think, to six or seven, and at some of them he handed in money. Now, I ask your lordships, if the case rested so, would there be the shadow of justification for this verdict? The Association is a public confederacy, avowing certain views, seeking a certain object. Its object is to obtain for Ireland a local Legislature. That object is legal; no man doubts or has ventured to dispute its legality. The right of those, who think that object good, to proclaim their opinion in its favour, to advance it by all fair and lawful means—to exert their individual influence, or, if it so pleases them, to combine and organise their energies for its achievement, is clear, undoubted, and not to be called in question. It is a right which must be sacred whilst a shred or shadow of a free constitution is permitted to subsist amongst us. The object of the Association is legal. It publishes its rules; they are legal too. They declare loyalty to the Sovereign and obedience to the law to be primary duties of its members. Thus constituted, it continues to exist for years. All its proceedings are notorious to all the world. It courts inquiry. It solicits investigation. It opens its doors to the public of every party. It submits to the scrutiny of every section of the press. It invites the visits of the ministers of justice, and, by one of its fundamental orders, provides that they shall be at liberty at all times to examine all its papers, and judge of the minutest workings of its system. It exists in the presence, and before the eyes, of successive governments; and for years there is no hint that in its principles or in its action there is anything contrary to the well-being of society or the law of the land. It goes on expanding its sphere of operation, augmenting its influence, and multiplying its members, until it absorbs the great majority of the Irish people. In such a body, thus legal in its aim—thus legal in its constitution—thus established, confirmed,

and sanctioned—a public man, identified with it in his general political principles, sometimes appears. Contributions to promote its legitimate purposes are transmitted to him, and by him delivered to its secretary. And is it to be contended that this is evidence of conspiracy against him? Is it to be contended that his simple junction with a society for a defined legal purpose shall make him responsible for illegal acts and words of all the members of that society whensoever and wheresoever they may be committed or uttered—if those acts and words profess to be in furtherance of the legal purpose which he sought to effect only by legal means?

Conspiracy is an agreement to commit crime, and because a man unites with others in the advancement of a cause not criminal at all, is the conduct of those others, in his absence, and pursued without his sanction or aid, to be evidence against him? My lords, this would be a formidable doctrine—conservative of all political abuses, obstructive of every political reform. It would paralyse the moral power of the community, and wrest from their hands the engine of social amelioration, which in later times has been found of the greatest efficiency and force. The mastery of individual minds has given place to the more powerful action of minds in combination. Whatever is contemplated of common usefulness, in industrial progress, in art, in science, in religion itself, is sought by the organisation of those who desire its achievement. The principle which sustained the old Achaians through their triumphant strife against the foes of their beautiful land, and made for the burghers of the German free towns a name which men will not willingly let perish,—that same principle acts with free and wholesome influence in every nation of the modern world. The artist sees multitudes blended together, to draw him from the obscurity in which

true genius, self-abased before its own lofty ideal of the beautiful, would hold him in shrinking humbleness. The projector, who can devise the means of increasing human comfort, or extending man's dominion over matter, is sure of being cheered on and rewarded by associations formed to realise his views. The missionary who devotes his heroic life to the widening of the bounds of Christianity and civilisation, knows and rejoices in the knowledge, while he sinks in the desert or perishes in the hut of the savage, that tens of thousands of pure and pious hearts have united themselves to perfect his holy work, and will not leave it unaccomplished. And the same principle is applied universally to politics. On every side of every question men combine—for aggression or for defence—for the maintenance or the change of existing institutions. Scarcely is there one person of influence in the country who has not been a member and subscribed to the funds of some association for the support of his own principles; and it would be a fearful thing to imagine that mere membership of such associations—in themselves innocent—in themselves legal—should be held to furnish evidence for a jury on a charge of constructive guilt, and to entitle a prosecutor to fix upon each of those enrolled in them liability for the proceedings of all, without proof of personal identification with those proceedings. That would not be just or reasonable; that would not consist with the safety of individuals or the progress of social improvement.

Denying altogether that the existence of any conspiracy has been proved against any person, I submit that the evidence of Mr. Duffy's attendances at the Repeal Association could not possibly, if it stood alone, be held to found the verdict which has been had against him.

What remains? The half-dozen publications in prose and verse which have been read from the 'Nation' news-

paper. This completes the case of the Crown. There is no other proof of any sort to charge my client. Now, if my argument on the construction of the 6 & 7 William IV., c. 76, be good for anything, there was no evidence of the proprietorship of this journal—no portion of its contents should have gone to the jury; and the verdict cannot be sustained. But, even should the Court be against me on that point, as I trust it will not be, I submit that the 'Nation's' articles establish no conspiracy against Mr. Duffy. Assume that he is a public journalist, whose business it is to discuss public matters, and to express his opinions freely and fairly upon questions of public interest; assume that he is identified in general sentiment with the members of the Association, and that, in commenting on its proceedings, as it was his right and his duty to do, he did not conceal his opinions, but expressed his honest approval of many of those proceedings, and his earnest desire for the accomplishment of a repeal of the Union; assume that the general tone and tendency of his paper was to assist the efforts of active politicians for that object, and that he published articles which were strong, vehement, and powerful in advocacy of his views; assume all this—and more the Crown cannot ask to have admitted—and can it be said that the evidence supports the charge of conspiracy? There may be proof of identity of principle the most complete—of harmony of feeling the most absolute—and yet a total absence of all proof of criminal agreement to do a criminal act. It was Mr. Duffy's business to comment on the transactions of the time; it was imperative upon him, in so commenting, to speak his real judgment on the conduct of the men who led the Repeal movement; and if, in the exercise of his profession as a journalist, he declared his approbation of it, that might be error or mistake; but it was not conspiracy. For his own acts he is responsible.

The law of libel is wide enough in its range and stringent enough in its action to reach and punish any violence of sentiment or any extravagance of phrase; but what safety is there for a journalist of any party if the Crown, not satisfied with that trenchant law, seeks to impose on him, because of his avowed community with it in political doctrine, a criminal responsibility for the acts of others who belong to it? What man will venture to write in any newspaper if this doctrine is to be established, that his avowal of attachment to the principles of a great body of his countrymen can be made the means of connecting him with meetings which he never attended, and with speeches which he never heard, so as to involve him in a conspiracy of which he never dreamed? I insist that identity of opinion as to a course of political conduct is no evidence of a criminal agreement to do a criminal act, and that, even if the matter rested thus, the articles read from the 'Nation' do not justify the verdict.

But there is more in the case. There is proof, as I have shown, that not only was the 'Nation' not recognised as the organ of the Association, but that it was publicly and repeatedly proclaimed by Mr. O'Connell not to be its organ. All relation of responsibility on the one side or the other was distinctly denied, and it was announced to the whole country, months before the prosecution was begun, that between these conspirators there was no connection, save that which an independent journal may maintain with those whose views it generally adopts. All other connection was distinctly repudiated, and of any other there is no jot of proof. Nay more, there is plain demonstration that Mr. O'Connell was not in confederacy with the 'Nation' or the 'Nation' with Mr. O'Connell, as to the very matters which the Crown has made the subject of complaint; but that, on the contrary, as to some of those matters, they were in

direct antagonism to each other. The lyric entitled 'The Memory of the Dead' was greatly relied upon, and repeatedly pressed on the attention of the jury. It was stated in the indictment—it was read by the Attorney-General—it constituted an important element in the prosecution. It is beyond all doubt that the writer of that lyric expressed strong sympathy for the sufferings, and admiration of the spirit of self-sacrifice, of those who, falling on evil times, proved their devotion to their principles by the loss of fortune, and liberty, and life. His earnest and powerful verse was offered in proof of conspiracy between my client and the great man whose boast it is, that he has taught the world the power of moral combination, and the mischief and crime of sanguinary revolution. But between the sentiments of the poet and those of Mr. O'Connell, with respect to the events of 1798, an opposition as marked, as clear, as irreconcilable as it is possible to imagine, has been proved to exist. The evidence shows that Mr. O'Connell proclaimed strongly, and openly, and repeatedly, his condemnation of the transactions of that sad period; and if the Crown desired to counteract the influence of those nervous lines, his speeches furnish the means of doing so, for they breathe a spirit utterly hostile in every way to that which pervades those lines, from the beginning to the end. Reading the observations of Mr. O'Connell—reading the reference of the Solicitor-General to his 'eloquent denunciation' of 1798, I find it extremely difficult indeed to conceive the reason of the Crown's reliance on 'The Memory of the Dead,' which only avails, if it proves anything, to negative the existence of conspiracy.

Before I close my observations on this branch of the case, I submit to your lordships that, on another ground, the publications in the 'Nation' newspaper cannot be evidence of conspiracy against my client. The general prin-

ciple of the law requires an exposition of personal intention to make any one a criminal. The mind is the measure of the virtue or vice of conduct. '*Actus non facit reum, nisi mens sit rea.*' This is peculiarly the case with respect to the charge against my client, yet the Crown seeks to apply to him a doctrine which has by degrees been established in derogation of the common law, only with respect to one class of offences—that of libel. The old views were strict, even in this respect, as they are expounded in 9 Coke 59, Lamb's Case, where knowledge and express malice are declared to be of the essence of the proof, even in libel cases; but by degrees another rule was established, and a man was made responsible for acts of which he had no knowledge. The new principle is stated in Roscoe, pp. 603–4.

Judge PERRIN: The law is now somewhat changed.

Mr. O'HAGAN: It is, my lord, and the change is of value as showing the feeling of the Legislature, that the ancient principle was the right one, and that the later decisions should not be extended. Of conspiracy the very essence is intention—the guilty purpose—the voluntary agreement to commit crime—and can it be said that every article in a newspaper is to be evidence of this, merely because the accused is its proprietor, and not because he had actual knowledge of the publication, or assented to it? Are you to infer that Mr. Walter of the 'Times,' or Sir John Easthope of the 'Chronicle,' agrees with every sentiment which those papers contain? Surely that would be a strong assumption in a criminal case; yet, unless it be made, how can the mere fact of proprietorship of a journal make it the infallible index—the binding organ of a man's spirit and intent? Where is the precedent for establishing such a principle? And why should the Court extend the arbitrary violation of the common law, which has hitherto prevailed in libel cases, to cases of conspiracy?

My lords, I submit, on all the grounds I have stated, that this verdict ought not to be sustained, and that a new trial should be granted. I pray your lordships to remember that the decisions you are asked to reconsider, and the finding we impeach, are amongst the most important which Court ever pronounced or jury ever gave. Cases like this are not of moment merely as they bear upon the interests of individual men: they are drawn into precedents which affect, for good or ill, the liberties of unborn generations. My lords, I conceive that, on strict legal grounds, my client is entitled to a new trial; but, passing from the consideration of all other matters, I adopt the phrase of one of the greatest of my countrymen, when addressing the predecessors of your lordships on a motion similar to this, but of far less consequence; and I 'put it to the conscience of the Court,' whether, on a deliberate reconsideration of the charge of the Lord Chief Justice—a reconsideration instituted with that candour which the purest and noblest minds can best afford to exercise in rectifying the errors to which all humanity is liable—you can come to the conclusion that it contained no misdirection, or that it was not calculated unduly to convey an opinion hostile to the accused—to control the minds of the jury, and determine the character of the verdict? If we are right in asserting that such was its probable influence, we are entitled to call upon your lordships to have that verdict reviewed; and I do hope, humbly but earnestly, that, in ruling a case of as solemn interest as any recorded in the annals of the jurisprudence of the world, you will so decide as to promote the general well-being, and make the administration of justice venerable in the eyes of that people of whose rights you are the appointed guardian, as you are the exalted expositors of its laws.

[Mr. Justice Perrin and Mr. Justice Crampton were in favour of granting a new trial. The Lord Chief Justice and Mr. Justice Burton were against it. The Court being equally divided the motion was refused, and the traversers were soon after sentenced and committed to prison.

But a writ of error grounded on defects apparent on the face of the record was brought to the House of Lords. It was upon this occasion that Lord Denman, in reference to the mutilated jury list, used these famous words: 'If such practices as have taken place in the present instance in Ireland should continue, the trial by jury would become a mockery, a delusion, and a snare.'

Ultimately the decision turned upon the point that some of the counts of the indictment were bad in law, and that, as one single and inseparable judgment had been given upon all the counts, that judgment must fail altogether. The majority of the law lords – *i.e.* Lords Denman, Cottenham, and Campbell—were of that opinion; Lords Lyndhurst and Brougham dissented. The judgment accordingly stood reversed.]

ARGUMENT DELIVERED BEFORE THE VISITORS OF TRINITY COLLEGE, DUBLIN, ON DECEMBER 12, 1845, *IN FAVOUR OF THE CLAIM OF DENIS CAULFIELD HERON, ESQ., A ROMAN CATHOLIC, TO BE ADMITTED A SCHOLAR OF THE COLLEGE.*

INTRODUCTORY NOTE.

THE question in this case was whether Catholics were eligible as scholars in Trinity College, Dublin.

A scholarship was a higher class of studentship obtainable in the third year of the College curriculum by success at a competitive examination. A scholar enjoyed a small yearly salary and certain academical privileges. He was also a member of the corporate body of the College, which under the charters consisted of the provost, fellows, and scholars of Trinity College, Dublin. The College was, and still is, the sole college of the University of Dublin.

Before 1793 Catholics were debarred from becoming even students of the College. This arose not from any definite law or any provision contained in the College charter or statutes, but from the exclusively Protestant character of the institution, and from the obligation imposed upon the students to attend religious services in which a Catholic could not take part without violating his conscience. To the obtaining of University degrees by Catholics there was an absolute statutory bar, an Act of William and Mary having required that the taking of the declaration against transubstantiation should be a condition for obtaining degrees.

In the year 1793 the statute termed The First Catholic Relief Act (33 Geo. III. c. 21) was passed by the Irish Parliament. It was, in fact, the first statute which conferred upon

Catholics the right to any civil or political franchise or office. The right to the enjoyment of property had been given eleven years earlier by an Act of 1782.

The 13th section of the Act of 1793 enacted that, in case his Majesty should so alter the College University statutes as to admit Roman Catholics to enter the College and take degrees in the University of Dublin, they might take such degrees without subscribing any declaration or taking any oath, except the oaths of allegiance and abjuration.

In the following year, 1794, an alteration in the College statutes was effected by the Crown, and Roman Catholics were expressly permitted to enter into, and receive their education in, the College, and to take the University degrees. Neither by the Act of Parliament nor by the royal alteration in the College statutes was the oath required to be taken by the provost and fellows abrogated or altered. This oath contains a stringent declaration against the Papal religion. Moreover, the statute of 1793 contains a long list of offices from which Catholics were expressly excluded, and among them were those of the 'provost and fellows of Trinity College, Dublin.'

While, therefore, it was clear on the one hand that Catholics were excluded from provostship and fellowship, and, on the other, that they were admissible to all grades of lay degrees, the case of scholarship was not distinctly dealt with, either by the Act of Parliament or the new College statute.

An oath, taken by the scholars on admission, which in other respects resembled that of the fellows, differed from the latter by omitting the positive declaration against the 'Papal' religion. The scholar's oath merely acknowledged the royal authority, and declared it to be *nullius externi principis aut pontificis auctoritati obnoxiam.* A Catholic could take this oath without scruple, understanding it to refer to the civil and political authority of the Crown. The College authorities, however, being advised that the change in the law did not render Catholics admissible to scholarship, persisted in excluding them from it, and they effected such exclusion by requiring as a test the receiving of the sacrament according to the rite of the Church of England. The legality of their proceeding in this respect was the subject matter of the contest in the present case. The same point had been previously raised in the year 1835 in the case of Mr.

Timothy Callaghan, but the proceeding dropped by the death of the applicant.

Denis Caulfield Heron (afterwards Mr. Serjeant Heron, a distinguished member of the Irish Bar, and on the threshold of promotion to its highest honours at the time of his unexpected and lamented death in the spring of 1881) entered Trinity College in 1840. In 1843 he stood for scholarship, and, according to the marks, would have obtained the fifth place out of sixteen vacancies. Inquiry was then made from his tutor whether he had taken the sacrament according to the rite of the Church of England in the College chapel, to which answer was made that Mr. Heron, being a Roman Catholic, had not done so, and that he had no intention of conforming to the Church of England. The vacancy was then filled up, excluding him.

Mr. Heron petitioned the Visitors of the College, the then Primate (Dr. Beresford), and the then Archbishop of Dublin (Dr. Whately), praying inquiry and redress. The Visitors declined any inquiry, on the ground that, as they were advised, Mr. Heron's religion was a sufficient bar. Application was then, in Trinity Term 1844, made to the Court of Queen's Bench, on behalf of Mr. Heron, for a mandamus to compel the Visitors to inquire into the case. After full argument by Mr. Holmes and Mr. O'Hagan for the applicant, and by Mr. Napier and Mr. Miller for the Visitors, a peremptory mandamus was, by the unanimous judgment of the Queen's Bench, awarded in Trinity Term 1845. They held a visitation accordingly, Judge Keatinge of the Prerogative Court acting as the assessor, on December 11 and 12, 1845, in the dining-hall of the College. The argument was opened on Mr. Heron's behalf by Mr. Pigot,[1] who was followed on behalf of the College by Mr. Moore[2] and Mr. Longfield.[3] Mr. Stephen Woulfe Flanagan[4] was then heard on behalf of the appellant, and was followed by Mr. Isaac Butt[5] on behalf of the College. Mr. O'Hagan, towards the close of the second day, replied on behalf of Mr. Heron.

[1] Afterwards Chief Baron of the Court of Exchequer in Ireland.

[2] Afterwards Judge of the Queen's Bench.

[3] Afterwards Judge of the Landed Estates Court.

[4] Now Judge of the Landed Estates Court.

[5] A distinguished advocate and member of Parliament, and leader of the Home Rule Party.

ARGUMENT.

My lords, on an ordinary occasion, and in common circumstances, the position in which the counsel for the appellant stand might reasonably embarrass the boldest advocate. We have to contend, not only against the practice of this ancient University for fifty years, but also against the impressions naturally and avowedly made on the minds of our judges, in some degree by that practice, and more by the opinions of distinguished lawyers upon statements of the case with the preparation of which we have had no concern. Our difficulties are great; but we have approached the discussion with the fullest confidence. We are profoundly satisfied that the decision ought to be in favour of our client, and, having regard to the solemn importance of the argument and the eminent position and character of the prelates to whom it is addressed, we feel that the very expression of their sentiments, which was involved in the rejection of the appeal of Mr. Heron, will render them more earnest in labouring for the discovery of truth and the doing of justice—that they will open their judgments more freely, on account of it, to the influence of all fair and legitimate reasoning, and guard themselves with more jealous vigilance against the action of those prepossessions which, without consciousness on their own part, so often work upon the intellect, and warp the judgment, of the purest and the best.

I am bound to say—and my colleagues and my client

concur with me in opinion—that the Visitors have acted towards us with candour and consideration, and that the governing body of Trinity College have met us in a manly spirit. Whilst they could they resisted our appeal, but, when our right to be heard was established, they threw no vexatious obstacles in our way, and their free and fair admissions of the facts of the case have enabled us to reach, without difficulty, the real matter in controversy between us. And those facts having been admitted—the perfect eligibility of Mr. Heron to the place which he seeks, save in the single matter of religion, having been established—and the view of the College having been sustained with all the advantages of advocacy as accomplished, and learning as profound, as the Bar of Ireland or any other Bar could furnish—I feel myself warranted in saying that, before the institution of this inquiry, the question was not thoroughly understood, and that the opinions which have been pronounced against the right of Catholics to scholarships have been formed with too much precipitancy, and without a proper examination of the grounds on which that right is asserted.

In a very memorable case, the Chief Justice of England (Lord Denman) described our law as consisting of common law, and statute law, and law taken for granted; and the law by which Catholics have been hitherto popularly presumed to be excluded from scholarships appears to me fitly to range itself with the third branch of his enumeration. Mr. Heron I believe to be entitled, of strict right, to the honour which he claims, as the reward of his admitted eminence in industry and ability; and, though the removal of preconceptions which, on such a subject, have possessed themselves of the minds of classes and individuals be a work of the extremest difficulty, I am persuaded that, if we can dissipate those preconceptions and manifest the full

strength of our argument, we have no need to fear for the result.

With a great many of the legal propositions and a large portion of the able speech of my friend Mr. Butt I have no occasion or desire to quarrel. That the Board of the College have a trust to administer in the election of scholars, and that they are bound to administer that trust according to the intentions of the foundress and her successors, there can be no manner of doubt. The only question is, What were those intentions, as they are developed in the charters of the University, and modified and controlled by the statutes of the realm? The case of Lady Hewley's charity and the Bedford case, and all the doctrines of equity, which have been so elaborately expounded, appear to me to have no proper bearing on the argument; and I dismiss them without further observation. Mr. Butt has proved, very satisfactorily for us, that the course which we have taken, in the conduct of this novel cause, has been precisely right. He has shown that neither from the Court of Queen's Bench nor from the Court of Chancery could we have obtained the relief which we desire; but that we now stand before the tribunal which is clothed with authority, and bound by duty, to do us justice. Error as to this matter, in former proceedings, tended to make them abortive. We have been more fortunate; and the difficulty must receive a solution now.

One topic was introduced by Mr. Butt which he ought to have omitted. He spoke of the declarations of Catholic politicians as to the propriety of opening scholarships to the competition of Catholic students. My lords, you have rightly said that the question before you is a purely legal question. It is a question to be argued and resolved according to the true interpretation of the law of the land. It is not a question to be decided, in this place, according to the

opinions of politicians. The colleagues of Mr. Butt and my own colleagues have so dealt with it. I shall so deal with it, and in no other way. The topic is not fit or legitimate. It might be urged with effect at the hustings or in Parliament; but the introduction of it here is wholly unjustifiable. My client complains of a legal wrong, and claims a legal remedy; and the views of politicians, one way or other, cannot be permitted to affect his interests. Eminent, most eminent, persons have given utterance to sentiments on this subject, which, elsewhere, at a proper time and before a proper audience, should receive the gravest consideration; but I claim for my client a judgment founded on the law, and I shall not be further tempted, by the improper allusion which has been made, to pass from the line of strictly legal reasoning.

My lords, as to the remedy which may be applied, should your graces hold that the appellant is entitled to a decision in his favour, we have conceived that it was not our duty to state the peculiar character of that remedy. But, as we have been invited to do so, I think that one of three courses may be pursued. Sixteen scholars have been elected. If Mr. Heron was eligible, although a Catholic, it is conceded that he ought to have been one of the sixteen. You may displace the last in the order of merit of those who were chosen, and put the appellant in his place; or, exercising the inquisitorial power which belongs to your high office, you may obtain from the Board all desirable information as to the facts of the election, and the peculiar qualities of the candidates, and so reach a fair and practical decision; or you may annul the election which has taken place, and command another to be held. That your graces have power to do any of these things appears to me to have been established in various cases, to which I shall call the attention of the learned assessor. Those cases are R. *v.*

Bishop of Worcestor, 4 Maul and Selwyn, 415; case of Catherine Hall, 5 Russ. 25; *ex parte* Inge, 2 Russ. and Mylne, 590; and Grattan *v.* Lendrick, 2 Huds. and Brooke, 409. There are other authorities to the same effect, but these will, I think, suffice to indicate the nature of the jurisdiction which the Visitors may exercise.

I now come to the matter of the argument—the grave inquiry whether, according to the statute law and the charters, Catholics, as such, are excluded from scholarships in Trinity College. My learned friend Mr. Moore opened his statement by observing that, in the prosecution of this inquiry, the intentions of the foundress of the University and her successors must be carefully regarded. I have already said that I give my full assent to that proposition; but I do not assent to the further proposition of Mr. Butt, that the charter of 1592, by which Queen Elizabeth established this University, was plainly a disabling charter, framed for the purpose of advancing the interests of a peculiar form of religion, and not for the benefit of the whole people of the country. Mr. Butt has strongly relied upon the passage in that charter in which these expressions occur: 'Sciatis quod Nos pro eâ curâ, quam de juventute regni nostri Hiberniæ pié et liberaliter instituendâ singularem habemus, ac pro benevolentiâ quâ studia studiososque prosequimur (ut eo melius ad bonas artes percipiendas, colendamque virtutem et religionem adjuventur),' &c.; and he has insisted that the use of the words *pié* and *religionem* necessarily imply that there was a sectarian purpose in the mind of the foundress. This does not seem to me to be very manifest. The words, taken by themselves, are general, and such as might not unreasonably be employed by a Christian sovereign, creating an institution for the benefit of an entire community—giving no peculiar advantage to any peculiar

creed, but anxious that the people should cherish the Christian faith and piety towards the common God of all. And this view is strengthened, when we consider other portions of the same charter. It is said, in the preamble, to have been granted on the application of Archdeacon Ussher, in the name of the city of Dublin, and on the ground that no college for the instruction of students in arts and letters then existed in Ireland—'Ut unum Collegium Matrem Universitatis, juxta civitatem Dubliniensem, *ad meliorem educationem, institutionem, et instructionem scholarium et studentium*, in regno nostro prædicto erigere, fundare et stabilire dignaremur.' And the College is declared to be one 'pro *educatione, institutione, et instructione juvenum et studentium in artibus et facultatibus*, perpetuis futuris temporibus duraturum.' Words larger or more comprehensive could not be used in a charter for the foundation of the most liberal university which the world ever saw; and they appear to demonstrate, that those which have been employed to sustain the argument for exclusion must be strained and coloured to reach that end.

But, in addition to this consideration, it is fair to take into account the acts of those by whom the College was originally erected. It was built on the site of the old monastery of All Hallows, which was granted for the purpose by the Mayor and Citizens of Dublin; and the Lord Deputy Fitzwilliam appealed to the gentlemen of Ireland to sustain it by their voluntary contributions, in a circular which is very remarkable and worthy of much attention upon this branch of the case. It will be found in 'Ware's Antiquities,' by Harris, p. 248; and more correctly in the 'University Calendar' for 1833, p. 29. It is to this effect:—

'By the Lo. Deputy and Councell.

'W. Fitzwilliam—Whereas the Queene's most excellent Matie. for the tender care wh. her Highnes hath of the *gode and prosperous estate of this her Realme of Irelande, and knowing by the experience of the flourishing estate of England how beneficiall yt ys to any countrey to have places of learning erected in the same*, hath by her gratious favour appointed an order and authorised us her Deputy, Chancellor, and the rest of the Councell, to found and Establish a Colledge of an University neare Dublin in the scite of Allhallowes, wh. is freely graunted by the Citizens thereof, with the Precincts belonging to the same, to the value of xx£ by the yeare, who are also willing eache of them according to their abilitie to afford to their charitable contributions for the furthering of so good a purpose. These therefore are earnestly to request you (having for your assistant such a person as the Sheriff of that County shall appoint for his substitute) carefully to labour with such persons within his barony (having made a book of all their names) whom you think can or will afford any Contribution, whether in money, som portion of lands, or anie other Chattells whereby their benevolence may be shewed to the putting forward *of so notable and excellent a purpose as this will prove to the benefytt of the whole countrey, whereby knowledge, learning, and civilitie may be increased to the banishing of barbarisme, tumults, and disordered lyving from among them, and whereby ther children and children's children, especially those that be poore (as it were in an orphants hospitall freely) may have their learning and education geven them with much more ease and lesser charges, than in other Universities they can obtaine yt.* The which business seeing God hath prospered soe farr, that there is already procured from her Maty. the graunt of a Corporation, with the freedome of mortmayne, and all liberties, favours, and immunities belonging to such a body, as by their charter and letters patent may appeare, and that the scite and place, wherein the buylding must be raised, is already graunted, yt should be a comfort and rejoycing *to the whole countrey* that ther is such a beginning of so blessed a work offered unto them to further and assist ther good Devotion, seeing the benefitt redoundeth to their own Posteritie and will in time appeare to be a matter of no small comodotie *to the whole countrey*.'

This letter, which is certainly free from any taint of exclusiveness, was addressed to the Taaffes, and Nugents, and Tyrrels, and others of the Pale, and was effective in drawing from them subscriptions for an object which appeared of common interest to all the Irish people. The religion of these families, and the part which they played in the history of that time, and of the times which followed it, appear, not indistinctly, throughout the records of Elizabeth and her successors; and any doubt which might exist as to the general sentiment on matters of faith which prevailed in the arch-diocese of Dublin and through the rest of the country, not only at the period when the charter was granted, but for years after, is set at rest by Bishop Mant's 'History,' in which he cites the statement of Archbishop Jones from the visitation book in this College, to the effect that the 'natives of this kingdom, being generally addicted to Popery, do train up their children in superstition and idolatry,' &c. Now, let it be held in mind that when the college was founded, and for a century afterwards, Catholics could sit in Parliament, and that although the Uniformity Act had been passed surreptitiously early in the reign of Elizabeth, it was not carried into execution during forty years of that reign. As to this, I may refer to the 'Analecta Sacra de Rebus Catholicorum in Hibernia,' p. 430, and 'Plowden's Hist. Review,' i. 98. It is not so very wonderful, therefore, that the original character of this institution, which took its site from an Irish corporation, and sought its endowment from Irish proprietors, should not have been such as to deprive of its advantages the vast majority of the inhabitants of that country, to the 'whole' of which they were so emphatically offered by the Viceroy. And thus, taking together the words of the charter and the annals of the time, I am warranted in contesting the position of my friend Mr. Butt as to the strictly

Protestant purpose of the foundress. The provost and fellows had the power of making statutes, and that power was soon exercised to the exclusion of Catholics; but the intentions of the Queen, as authentically expressed by herself and her representative, do not appear to have warranted that exclusion, and when afterwards Charles I. (Literæ Patentes, 1637) came to establish the fellowships of law and medicine, he did so, declaring that those professions 'chartæ fundationis istius collegii consentaneæ sint,' and thus, in some degree, sustaining the view which I am taking as to the true sense of the original charter.

So much I have said upon this branch of the argument, because it has been made the subject of strong observation on the other side; but I was not bound to consider it at all, nor will a view adverse to mine in relation to it affect the decision of the general question. For, whatever may have been the intention of Queen Elizabeth—and it is not to be strained by bold assumption or doubtful inference, and in the absence of a clear and unequivocal and coercive declaration of it, to the abridgment of the people's opportunities of education in their only University—I contend that the charters of her successors have given us a plain right to the privilege which we claim, without any regard to, and, if need be, in spite of, that original intention. If I am right in the view which I have suggested, an additional difficulty is thrown in the way of those who maintain the system of exclusion; but, even if I am wrong, my argument, on other grounds, will remain irresistible. My lords, since the ruling of Heydon's case (Plowden's Reports, p. 205) it has been held that, for the interpretation of all statutes, 'four things are to be discerned and considered:—1. What was the common law before the making of the Act? 2. What was the mischief and defect against which the common law did not provide? 3. What remedy the Parliament hath

resolved and appointed to cure the disease of the commonwealth. And, 4. The true reason of the remedy.' And it has been held the duty of judges, at all times, to make such construction as shall suppress the mischief and advance the remedy. This ancient rule will not be without its value in the consideration of the statutes of the Parliament and the College, according to which the appellant's claim must be decided. With the common law, we can have nothing to do in the matter—at least, as casting any obstacle in our way. That law was the great creation of Catholic intellect and the faithful guardian of Catholic rights, and no one will pretend that it can warrant the disabilities of Catholics on account of their religion. But, whilst it can furnish no argument against us, its liberal wisdom may fitly be called in aid of our argument. It commands that, in all statutes, penal provisions shall be construed strictly, that the construction of provisions of a doubtful tendency shall be favourable to the enlargement of the subject's privileges, and that those which have been formed to give him freedom, or open for him the way to knowledge, shall be enforced in a generous and benignant spirit. To those great principles, which are as old as our constitution, and as settled as the foundations of our jurisprudence, it will be needful, throughout this inquiry, to have continual reference; and, without forgetfulness or abandonment of them, it seems to me impossible that the appellant's right can be denied.

The whole case must turn upon the answer which shall be given to two questions—First, is there anything to exclude Catholics, as such, from scholarships in the statute law? And, secondly, is there anything so to exclude them in the charters of the College? For the purpose of supplying an answer to these questions, I shall consider successively the statutes and the charters. As to the first, the lucid and powerful statement of my learned friend Mr.

Pigot has made it wholly unnecessary that I should go into detail. But these things I may state as incontrovertible — that there is no single provision in any Act of Parliament disabling or purporting to disable Catholics from becoming scholars of Trinity College—that the only disabling operation of the statute law, as it existed before 1793, was to effect their exclusion from degrees, and provostship, and fellowship—and that since 1793 it has operated to exclude them from provostship and fellowship only. Before 1793, they were excluded from degrees by the 28th Henry VIII. c. 13, which was repealed by the 3rd and 4th Philip and Mary, c. 8, and substantially re-enacted by the 2nd Elizabeth, c. 1, s. 10. The 3rd and 4th William and Mary, c. 2, merely alters the oath prescribed by the 2nd Elizabeth, and prescribes a declaration and other oaths, but leaves the disability as to degrees just as it was before. Then, by the 17th and 18th Charles II. c. 6, s. 5, Catholics were rendered incapable of becoming heads, masters, or fellows in any College; and the 4th George I. c. 3, abolishing a portion of the oath prescribed by that statute, continues the exclusion. There were a number of Acts disabling Catholics from becoming members of municipal corporations, but they do not apply to Trinity College; and those only to which I have referred are necessary to be considered in relation to the matter in hand.

It is a curious thing, and worthy of remark, that the legislation of England, as to collegiate arrangements, was more exclusive in its character than that of Ireland, during the period within which these statutes were passed; for, by the 13th and 14th William III. c. 6, s. 1, all members of colleges or halls, being of the foundation and of the age of eighteen years, and all persons teaching pupils in the University, were required to be Protestants; and by the 1st George I. s. 2, c. 13, all heads and members of colleges,

being of the foundation, or having any exhibition, of eighteen years of age, were again required to be Protestants. These provisions, if they had been in operation in Ireland, would have accomplished the exclusion of Catholics from scholarships; but they were not: and the contrast is somewhat remarkable, as indicating different purposes in the Legislatures of the two countries. It is also remarkable that, in the Caroline Code or Laudian Statutes, promulgated for Oxford University in 1636, all students of sixteen years of age were required to subscribe to the Thirty-nine Articles, and to take the Oath of Supremacy (Ward's 'Oxford Statutes,' p. 10), whilst in the charter of Charles I., promulgated in 1637, and revised by the same Archbishop Laud, under whose supervision the Caroline Code was prepared, no such regulation is contained. By the statute law of Ireland, until 1793, Catholics were excluded from headship and fellowship in the University, and from taking degrees; but there was no special provision as to scholarships. The distinction established was between the heads and fellows upon the one side, and the students, including scholars and all the rest, upon the other, who, so far as legislation had effect, might have been Catholics, but could not have taken degrees. Then came the enabling statute of 1793. Mr. Moore has fairly admitted that this statute created no new exclusion. It removed the statutable bar to the taking of degrees, and conferred many other benefits on the Catholic community; but it affected them with no restriction which did not before exist. Substantially there is no difference in our construction of this statute from that which has been adopted on the other side. But Mr. Moore has sought to sustain his general view by suggesting that, if the Legislature had then intended Catholics to be eligible to scholarships, it would have made them so by express enactment. Now, it appears to me that the effect of the

statute is precisely the opposite of this. Its seventh section, which opens lay corporations to Catholics, provides, by the exception, that they shall not be further admissible to that of Trinity College than they had been before. But before they had been admissible by law to scholarships, and no change is made in that respect. And then, when, in the ninth section, the Act specifically names the offices from which Catholics shall continue to be excluded, commencing with that of Lord-Lieutenant, and enumerating, with careful and scrupulous minuteness, almost every post of trust, or honour, or emolument which Irishmen could aspire to reach, it declares that they shall not be provosts or fellows, but it does not declare that they shall not be scholars. The attention of the framers of this statute was fixed upon the Corporation of Trinity College. They knew its constitution perfectly well; and if they desired to make scholarships exclusively Protestant, why did they not do so? Why did they specify the provost and the fellow, and make no allusion whatever to the scholar? There must have been a reason for the distinction, and it is only to be discovered in the design of the Parliament to leave the scholarship open, and keep the provostship and fellowship closed.

Thus, it carried out the policy of all the past legislation of the country, and it had reason; for, whilst there was always such a difference in the position and duties of the provost and fellow and scholar, as gave some conceivable pretext for the difference in their treatment throughout the statutes to which I have referred, this very Act of 1793 removed the single ground on which the exclusion of Catholics from scholarship could have been even colourably justified. It gave to them the elective franchise. For very many years that franchise had been taken from them. But it was one of the great privileges of the scholar. One of his peculiar rights was to employ it—one of his peculiar

duties was to employ it well; and if, before it became the common property of the people, a Catholic had been made a scholar, he would have held the place denuded of its power—he would have been one of a class within a class—half-trusted and half-endowed. There would have been an apparent inconsistency in making him a member of a Corporation, and declaring his unfitness to enjoy its immunities and share its influence. But, when the statute of 1793 took away this disability, shook the system of religious exclusion to its base, and gave the assurance of its ultimate extinction, the sole pretence for continuing the sectarian character of the scholarship was done away. There remained no duty peculiar to it which a Catholic could not perform, just as well and with just as safe a conscience as any Protestant. The use of the franchise is the one act which the scholar performs as a member of the Corporation. He does no other—he can do no other—absolutely none; and when, to the doing of this, the Catholic became as competent as the Protestant, all reasonable ground of exclusion from the place ceased utterly. The Act of 1793 becomes in this way of vast importance in the argument, because, although it left the right to scholarship as before, it removed a difficulty in the way of the concession, and prepared for and invited the exercise of the royal authority, by which, in 1794, that concession was accomplished. Thus, by the statute law, the Catholic remained ineligible to provostship and fellowship; he remained also eligible to scholarship, and became legally capable of taking degrees. From scholarship and degrees he was equally debarred by the charters; but by the statutes he was equally admissible to both.

The Act of 1793 enabled the king to remove all disabilities created by the charters, and he did so, fully and effectually, in 1794.

Judge KEATINGE: Before you pass from the Act of 1793, may I call your attention, Mr. O'Hagan, to the words 'to enter into and take degrees in the said University,' which occur in the 13th section?

Mr. O'HAGAN: I had intended, my lord, to consider those words, and the argument founded upon them, when I should come to examine the construction of the royal letter of 1794; but I shall shortly observe upon them now. Mr. Butt has said that the Legislature, in professing its desire to enable Roman Catholics 'to enter into' the University, set the seal of legislative recognition on their exclusion before the statute was passed. Why, if it had done so ever so much, his reasoning would not have been aided, for, whatever was the state of things before 1793, we insist that every antecedent disability of Roman Catholics, in relation to scholarship, was removed in 1794. But I am disposed to go further, and to say that, upon a fair construction of the words 'enter into,' this section of the Act comes in aid of our argument. Looking to the previous condition of the law, and 'the reason of the remedy' which was needed and applied, it is plain that neither Act of Parliament nor Royal Charter was required to authorise the entrance of Catholics into Trinity College. There was no obstacle to their entrance of any kind. No subscription of articles or taking of oaths was, as in Oxford, essential to enable them to enter. The difficulty arose after they had got into the University, from the imposition of religious obligations which they could not discharge. They might enter freely, but they could not remain conscientiously. Then it is quite plain that the words 'enter into' could not have been used in their literal sense. There would have been absurdity in so using them, for the Parliament had no need to enable Catholics to do that which they had perfect liberty to do before; and the result must fairly be

taken to be, that by those words in the statute, as by the word 'admitti,' in the royal letter, which I shall just now consider, more than the simple right to enter was regarded; and the view of the Parliament and the King was plainly not to bestow that barren right alone, but to clothe it with the beneficial incidents of entrance—the means of instruction, the aids to progress, the privileges and emoluments, which had been provided to make the place of student fruitful of advantage.

Having now discussed the statute law in its bearing on this question, I shall proceed to examine the charters of the University. The operation of those charters, before 1794, appears to me, after a full inquiry, to be fairly indicated in the statement of the following propositions:—First, that Catholics were excluded, by force of those charters, as well from the opportunity of instruction as from office and authority in the College; secondly, that they were excluded, by one set of regulations, from provostship and fellowship, from which they were also excluded, as I have shown, by statute law, and, by a totally different set of regulations, from studentship and scholarship; and, thirdly, that the student and the scholar were dealt with through them all, as to religion, precisely in the same way, subjected to the same restrictions, and excluded by the same means. The general exclusion, which is plain, was effected by very distinct agencies as to the governing body of the College, and the students and scholars. The provost was required to be a bachelor of divinity, to administer the Sacrament, to subscribe the Thirty-nine Articles, and to read service in public; and, by his oath, he professed himself a Protestant. The fellows were expressly required to be Protestants. They had to take the Oath of Supremacy; to make theology their profession; to officiate in Chapel and at the Sacrament; to become catechists and professors

of divinity; and a conviction for heresy was made a ground for their expulsion. By these regulations the students and scholars were not at all affected. Their Protestantism was secured, not by oaths or professions, but by the imposition of duties which Catholics could not perform; and to those duties they were alike subjected. There is a provision that the provost and senior fellows shall take care 'ne qua Pontificiæ aut hæreticæ religionis opinio intra Collegii fines alatur, aut propugnetur, sive publice, sive privatim.' This, of course, applied equally to the student and the scholar; and so their obligations to attend St. Patrick's Cathedral, to be present at prayers according to the Anglican liturgy, to receive catechetical instruction, to take the Communion in the Church of England, to go to the College chapel, are all common duties required of both, without the least distinction. And, as if to make the identity quite complete, a passage is inserted in the charter of Charles to this effect:—'Pupilli omnes, quocumque vocentur nomine, volumus, ut iisdem legibus, ac statutis, quoad mores et exercitia scholastica, teneantur et pareant quibus discipuli et Scholares Collegii expensis sustentati.' So that the scholar and the student, as to exclusion on the score of religion, before 1794, stood precisely in the same position. The same requisitions which made the one a Protestant made the other a Protestant also, and it is notable that those requisitions were equally addressed to the sizars, who are frequently named with the students and scholars in the passages by which they are affected, and always clearly burthened with the very same religious responsibilities, working the same religious disqualifications. I broadly assert that, before the promulgation of the royal letter of 1794, the student and the scholar were on a level as to all sectarian restrictions, and that no duty which a Catholic could not perform was imposed upon the one and not im-

posed upon the other. The single obligation, of a religious kind, which can be alleged to have been peculiar to the scholar, was the reading of a chapter in the Bible during dinner. But if it was the scholar's duty to read, it was the student's duty to hear, and the objection to the reading and the hearing must have been exactly the same.

Judge KEATINGE: The student need not have been present.

Mr. O'HAGAN: He was compelled to be so, by the Letters Patent of Charles, c. 12, which direct 'Ne quisquam exeat ante gratiarum actionem, nisi veniâ ob exigentiam aliquam petitâ.' In this respect, therefore, the parity prevails, as in everything else, and all difficulty on the subject is removed, for the College has long ago repealed the provision as to the reading of the Bible. It was so completely obsolete as to have been omitted in the later editions of the statutes, though it is inserted in that of Mr. M'Donnell, published since Mr. Heron's claim was made. There was, therefore, I aver confidently, no ascertainable difference between the position of the student and the position of the scholar, in regard to religion, before 1794.

But a difficulty has been raised as to the oath of the scholar, which I am bound fully and fairly to meet. It is said that this oath creates a distinction between studentship and scholarship—that the student takes no such oath —that it cannot be taken by a Catholic, and that, therefore, the parallel which I have laboured to establish must necessarily fail. It is manifest, in the first place, that the mere taking of an oath can constitute no such distinction as is asserted on the other side. Oaths are taken in the College, by various officers and for various purposes, without any reference to peculiar religious sentiments. The bursar and the registrar take oaths of office—the graduate takes an oath on his admission to the library; and no one can con-

tend that there is any connection between the taking of such oaths and the establishment of an exclusion from collegiate immunities on sectarian grounds. Then, the only thing to be really considered is, whether the scholar's oath contains any obligation to which a Catholic, as such, can peculiarly object?

Two points are made upon this oath. The first regards the portion of it in which the scholar swears that he will cheerfully obey the statutes of the College. It is said, that those statutes contain injunctions which a Catholic cannot obey, and, therefore, he cannot take the oath. The plain answer is, that it has reference only to existing and operative statutes, and not to those which are obsolete and repealed. Now, our case is that there are no existing and operative statutes which can do any violence to the conscience of a Catholic seeking his scholarship. We shall prove that there are none such, and, if we do, there is an end to the objection. But before it can be considered at all, the Visitors must settle the construction of the royal letter of 1794. If they settle it with us, they decide that the Catholic has been relieved from all difficulty as to the statutes, and he can freely take the oath; if they settle it against us, he is plainly excluded from scholarship, and the oath need not, in this point of view, be considered at all.

Mr. Moore has urged that, as there is no change or abrogation of the oath in terms, it cannot be affected by implication. But I do not feel any embarrassment in this respect. If the statutes which require the scholar to perform duties incompatible with the faith and discipline of Catholics be abolished, *quoad* them, they can have no hesitation in swearing to obey those which remain; and it can matter nothing whether the oath be altered in express terms or by necessary implication. If any other doctrine were entertained, the greatest practical absurdities would

result. The fellow swears to obey the statutes, and to cause them to be obeyed by others. And will it be contended that, because the provisions as to attendance at church and at the Sacrament still appear upon them, he is bound to compel a Roman Catholic, in accordance with the literal terms of his undertaking, to comply with those provisions? If Mr. Moore be right, that monstrous result must inevitably follow. There is no abrogation or change of the oath; it remains just as it was before Catholics were freed from the old restrictions; and it is only by implication that the fellow is relieved from the duty of enforcing the observance of statutes which are altogether repealed. So, as to the provost; the Letters Patent of Charles I. forbade him to marry—'nullus in præpositum eligatur nisi cœlebs;'—and provided that, if he did so, he should leave the College, or be removed. In the very same page of those Letters his oath declares that he will observe the statutes—'*in omnibus*.' By Letters Patent of George III., in 1811, this restriction is removed, and he is allowed to marry. But his oath remains unchanged; and the married provost takes it with a safe conscience, although the obsolete law is still on the face of the statutes. Does anyone charge him with indifference to his oath? Surely not. He swears to obey the statutes which exist, and he does obey them; and, precisely in the same way and on the same principle, the Catholic scholar can promise to obey the statutes, all of them which could conflict with his conscience having been done away. I pass to the second objection.

Judge KEATINGE: Permit me to interrupt you for a moment, Mr. O'Hagan. I presume you do not contend that the charter of 1794 interfered in any way with the religious duties or obligations of Protestants?

Mr. O'HAGAN: Certainly not.

Judge KEATINGE: And you contend that it dispensed with the observance of those duties so far as Roman Catholics were concerned?

Mr. O'HAGAN: I do, my lord.

Judge KEATINGE: But a scholar, though a Roman Catholic, is still obliged to take the oath.

Mr. O'HAGAN: I can have no objection to admit that he may be so.

Judge KEATINGE: Then, the oath being twofold, that he shall observe the statutes so far as they relate to himself, and that he shall do all he can to have them observed by others, you are pressed with a difficulty which has been suggested at the other side.

Mr. O'HAGAN: I know that such a suggestion has been made; but it seems very much beside the question. If we be right in our interpretation of the royal letter of 1794, it dispensed with every obligation which could interfere with the enjoyment of a scholarship by a Roman Catholic. It so dispensed, not in direct terms, but by necessary implication; and it reached every class of duties and observances, which could by possibility create embarrassment to the most scrupulous conscience. This oath must be read in the light of that letter, and the very same principle on which the provost and the fellows act in relation to the oaths taken by them, and which, as I have proved, removes all difficulty as to the scholar's undertaking to obey the statutes, will abundantly suffice to relieve him from liability to propagate opinions or enforce actions, by the propagation or enforcement of which he might compromise his faith. The world's wealth could not induce a conscientious Catholic to do so; and how can it be supposed that the charter which was aimed, as we contend, to relieve him of all disabilities on account of his religious opinions, left untouched a disability so very grave as this? It seems to me quite

plain that, if our construction of that charter be correct, there is absolutely nothing in the objection.

The second point made in relation to the oath is this—that Catholics cannot take it, inasmuch as it involves a disclaimer of the authority of the sovereign Pontiff. To this I answer, that the objection does not arise in this stage of the case. The oath is to be taken after election, and not before it; and it is premature to consider whether a person, not elected, could or could not make a profession which he has never been called upon to make at all. If the appellant had been elected, and had refused to take the oath, the statutes of the College point out the course which, in such a state of circumstances, should have been adopted by its governors. But, no election having been made, the difficulty does not properly arise. Again, assuming, for the sake of argument, that the oath does contain declarations inconsistent with the belief of Catholics, it seems quite plain that, if our construction of the royal letter of 1794 be correct, and if the King designed to admit Catholics to scholarship, that oath must be taken to be repealed, so far as the inconsistency extends, just as the provisions excluding Catholics from studentship and sizarship are abrogated, not in terms, but implicitly, and by necessary intendment.

But, claiming the benefit of these replies to the objection, I meet it more directly, and I deny that the oath contains any statement of opinion which a Catholic can hesitate to make. My learned friend Mr. Pigot has already referred to the great Catholic periodical of the empire (the 'Dublin Review'), which, in an able paper, speaking of the very subject now in controversy, and setting out the very words of this oath, has pronounced that to them 'no Catholic can have the least objection.'

Judge Keatinge: I have already said that this period-

ical cannot affect the judgment of the Court. Its opinion was given *post litem motam.*

Mr. O'HAGAN: I submit that the opinion is more valuable on that account. It was given in the year 1838, after Mr. Callaghan had raised the question, but before Mr. Heron had entered College; and it was given solemnly and deliberately, and with full appreciation of the importance of the case and the responsibility of deciding on it. It is notorious that the 'Review' is much under the control of the Catholic prelates and clergy, and circulates very largely amongst them; and its judgment, pronounced so many years ago, and never denied or controverted, ought to have very considerable weight.

Judge KEATINGE: I cannot think that it should influence us.

Mr. O'HAGAN: I need not press it upon the Visitors. Without reliance on it, I hope to satisfy them that there is no foundation for this objection; but I have urged it, as of importance, because I conceive it to be the peculiar province and the peculiar right of Catholics to judge, for themselves, of the nature and effect of the oaths they are required to take. I protest, respectfully but strongly, against the assumption of power by any Protestant tribunal to judge of a matter on which the conscience of a Catholic, enlightened by religious instruction and a knowledge of the doctrine and discipline of the Catholic Church, can alone furnish the guide to a right decision. The Irish Catholics have proved their honesty, in this regard, by enduring seclusion from the common rights of citizenship, and loss of social consideration and wealth and power, because they repudiated the oaths prescribed to them by the Legislature. They were told, over and over again, that they were themselves the authors of their own degradation—that they had full power, by abandoning

their scruples, and swearing as they were desired, to enter Parliament and reach every place of dignity in the State; but they spurned the insidious counsel, and chose to continue enslaved and honest, rather than purchase civil freedom, and the highest worldly endowments, by paltering with honour and abandoning truth. This people may safely be trusted to resolve for themselves as to the propriety or the impropriety of adopting any form of obligation. They will not, for such a thing as a scholarship, compromise that integrity which all the temptations of the greatest empire of the world failed to corrupt. They are the fit judges of the matter, and with them it should be left.

But there is no pretence for saying that the oath cannot be taken by conscientious Catholics. If it involve denial, or doubt, or question of the Pope's spiritual supremacy, they would utterly reject it; but it does no such thing. The 'regia auctoritas' to which it pledged the subject to obedience was the civil power—the power of the State—and no Catholic hesitates to proclaim that the Pope cannot control that civil power. His spiritual supremacy, in its largest range, and extending to the extreme boundaries of the Christian world, is entirely consistent with the temporal dominion of sovereigns within their kingdoms; and the plain purpose and effect of this oath was to enter a solemn protest against the doctrine that the Pontiff had power to depose the King. This was the doctrine which was feared and resisted at the period when that oath was framed; and it was a doctrine which Catholics then, as now, were at perfect liberty to repudiate and abjure. I may speak with some confidence on this subject, for I have sworn to my belief in the truth of my averment. I have sworn, and so has my friend Mr. Pigot, and so have the Catholic prelates, and priests, and laity of Ireland generally, that we do not believe that 'the Pope, or any other foreign

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prince, prelate, state, or potentate hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm.' And, surely, it is not presumptuous in us to require that some attention shall be given to our own solemn statement, before Heaven, of the principles of our own faith; and that we shall not be judged according to the false notions, the ignorant prejudices, and the unwarranted assumptions of those who hold no communion with us, and yet venture to dogmatise upon the doctrines of our Church.

Mr. Butt was wholly mistaken in asserting that the principles of the Gallican Church, as to the temporal independence of sovereigns, were novel principles in 1682. They were the old principles of the Catholics of France and of the Catholics of Ireland, affirmed by their prelates, proclaimed by their councils, and practically asserted in the conduct of their brave and loyal people. There has been controversy about the Ultramontane opinions; and individual theologians have contended for that right of the Pontiffs to interfere with the civil concerns of independent States which was often claimed by, and willingly conceded to them, in times that are gone, when crowns and kingdoms were laid at their feet, and they were the selected arbiters between fiery monarchs and conflicting nations; but it is a stale and exploded error to suppose that any doctrine inconsistent with the temporal supremacy of sovereigns was ever a part of the Catholic faith. I can call to my aid, if need be, a cloud of witnesses. I can appeal to the whole Irish people, who have pledged themselves, under the most awful sanctions, to the truth of the assertion I have made. I can rely on the testimony of the Continental Universities so strongly given during the progress of the Catholic question. I can cite the authority of Delahogue, an able man, and a consummate theologian,

in whose treatise, 'De Ecclesia,' at this moment a class-book of Maynooth, this subject is elaborately discussed. I can rely on the energetic declaration of the most illustrious Bishop of France—'the Eagle of Meaux'—the great Bossuet, who, in his book 'Sur l'Unité de l'Eglise,' has expounded the doctrine as to the distinction between the civil and the spiritual power, just as I have ventured to expound it here, and just as the assembled clergy of France, in the famous declaration of 1682, proclaimed it in these memorable words:—

Kings, therefore, and princes in temporals, are not subject by the ordinance of God to any ecclesiastical power, nor can they be deposed, directly or indirectly, by the authority of the keys of the Church, nor can their subjects be exempted or freed from the faith and obedience, or from the oath of allegiance; and this declaration, necessary for the public tranquillity, nor less useful to the Church than to the State, is to be maintained as agreeable to the Word of God, the traditions of the fathers, and the examples of the saints.

And if further proof be wanting in support of a proposition, which I am driven, not without feelings of pain and wonder, to sustain at this day in an assembly of educated men, I shall call in aid the words of one whose manly and accomplished intellect did honour to the Catholic Church of Ireland,—whose loss to her, in the prime of his years and the vigour of his faculties, she has not ceased to mourn,—and whom she must ever honour as one of the greatest glories of her hierarchy. Dr. Doyle ('Essay on the Catholic Claims,' p. 94) utters these emphatic words:—

The doctrine taught and maintained at present throughout Germany, Spain, and Portugal, as well as in the entire of the Austrian dominions, is the same as that taught in France and Ireland. The doctrine of the deposing power is not taught anywhere, not even in Rome, where, if casually introduced, it is freely impugned. I have made the most diligent inquiries, and the most extensive in my power, with regard to it, and those

inquiries have confirmed my former opinions, that the doctrine of the temporal power of the Pope is completely obsolete; that it has disappeared with the state of society which gave birth to it, and could as easily be revived as the earth could be made to retrograde, or the art of printing be lost in oblivion.

Need I go further? Will anyone now venture to question the truth of the statement I have made? And, if it be incontrovertible, what becomes of the argument not urged by Mr. Moore, but opened by Dr. Longfield, and adopted by Mr. Butt, that the oath which declares the 'regia auctoritas' not to be subject 'potestati Pontificis' cannot be conscientiously taken by a Catholic, because he would so protest against the spiritual power (*potestati*) of the Pontiff?

Judge KEATINGE: You contend that the oath could have been taken by a Roman Catholic at the time when it was framed?

Mr. O'HAGAN: Of course, my lord. What a Roman Catholic can do now, a Roman Catholic could have done then. That could not have been his faith in 1637 which is not his faith in 1845.

Mr. Butt has used a very strange sort of argument in relation to this part of the case. He says that, if the oath was framed with the intention of excluding Catholics from scholarship, it matters not whether they can properly take it or not; it is equally efficacious for their exclusion either way. Why, how are you to reach the intention, but by the words? If those words are plainly consistent with the faith of Catholics, are you to infer an intention in the framer of them which he has not expressed—nay, an intention antagonistic to that which he has expressed? Is this reasonable? Would it be just? But that the intention was otherwise we are not left to conjecture, without cogent evidence in addition to the plain terms of

the oath itself. Compare it with the oaths required to be taken by other persons in the College, and its aim as a protest against the deposing power of the Pope and his interference with the civil State becomes still more manifest. Consider the Oath of Supremacy, which the provost and fellows were bound to take. Dr. Longfield has said that the scholar's oath is only a compendious form of this. Why, they stand in absolute and glaring contrast with each other! By the Oath of Supremacy, it is declared (1st Elizabeth, c. 1) not only that the Queen's highness is the supreme governor of the realm, but, also, that no foreign prince, prelate, state, or potentate, hath or ought to have any jurisdiction, '*ecclesiastical or spiritual*, within this realm.' The scholar's oath is wholly different from this, and must have been framed with a different object; for it contains merely an assertion of the royal authority, and omits every syllable which, in the Oath of Supremacy, is directed against the spiritual jurisdiction of the Pope. There was surely a reason for the distinction. The same observation holds, if we contrast the scholar's oath with the Oath of Supremacy of Henry VIII. and the oath prescribed by the 3rd William and Mary, c. 2, both of which are especially directed against the Pope's spiritual authority. Passing from these oaths, I find that the provost, who must previously have taken the Oath of Supremacy, in his oath of office, not only declares the royal power to be 'summa,' but also 'summa *in omnibus*,'—words advisedly omitted in the scholar's oath;—and this declaration is combined with a distinct profession of Protestant faith. And so, in the oath of the fellow, after a like profession, and a promise that he will constantly oppose 'pontifical opinions,' he proceeds, 'quod ad regiam auctoritatem,' &c., exactly in the words of the scholar's oath. A clear distinction is taken between the assertion of religious

opinion and the profession of obedience to the temporal power, and the difference between the oaths, which are as different in their terms and in their purpose as oaths can be, is to be accounted for plainly thus—that the fellow swore as a religious teacher, and the scholar swore as a subject, proffering true allegiance to his sovereign; that the former was compelled to pledge himself to the Protestant view of the Pope's spiritual jurisdiction, and the latter was only required to acknowledge the civil supremacy of the King.

Dr. Longfield felt himself pressed by this distinction, and he sought to explain it away by saying, that the scholar was young, and was not, therefore, required to make an elaborate profession of religious faith. No such tenderness towards a youthful conscience was displayed by Archbishop Laud when, in the Caroline Code of Oxford, he required boys of sixteen years to subscribe the Thirty-nine Articles, and he, I have already said, had the settling of the charter of Charles, which contains the scholar's oath. But, without reference to this, Dr. Longfield's answer cannot help his argument. If he be right, and if the scholar was intended and required to deny the spiritual supremacy of the Pope, he thereby denied the Catholic religion; and the profession of his faith was practically as clear and pronounced, though not as elaborate, as if he had denied it, article by article, and dogma by dogma. There is no possibility of reasonably escaping the difficulty, save on the supposition that the oath of the scholar was directed against the deposing power, and the oath of the fellow against the spiritual supremacy of the Pope.

But the Bedell statutes, compared with the charter of Charles I., conclude this argument against my learned friends. They had been framed before 1637 in an intensely anti-Catholic spirit. They described the Catholic religion

as unchristian and heretical. They created a class of scholars called Hibernici, who were to learn the Irish language and do certain religious duties. And, in them, the oath of the fellow and the oath of the scholar were one. In the charter of Charles those statutes are declared not to suit the College. They are changed. The Catholic religion is no longer called anti-Christian or heretical: the Hibernici cease to have religious duties; and the oath of the scholar is altered by omitting from it every passage marked with a peculiarly religious character and containing a repudiation of Catholic opinion; whilst the fellow's oath remains unaltered. Archbishop Laud, under whose direction the charter of Charles was framed, had the Bedell statutes before him. He deliberately omitted the passage from the scholar's oath and retained it in the fellow's. He did this for a purpose; and the effect of his proceeding was, to take from the oath of the scholar everything of a religious character. Is not this conclusive? Had the omission in the new oath a meaning? If it had not, why was it made? If it had, what could have been that meaning, but to distinguish the obligation of the fellow and the scholar as to the very matter of spiritual supremacy? I have thus, I trust, demonstrated at once from the terms of the oath itself, from the negative proof supplied by contrasting it with the Oath of Supremacy and the oath of the provost and fellows, and from the positive, speaking evidence as to the intention of its framer, derived from a reference to the Bedell statutes, that no Catholic can have any hesitation in taking it, and that it creates no difficulty in the assertion of the appellant's claim.

If I am right so far, these positions are established—first, that, by the statute law in 1794, the provost and the fellows must necessarily have been Protestant; secondly, that Catholics were not then made inadmissible to scholar-

ship or studentship by any statute law; thirdly, that their exclusion, created by the charter, as to scholarship and studentship, was precisely the same, operative to the same extent, and effected by the same means. In 1794 the Crown had full power to admit them to scholarship and studentship, and every place and office in the College, save those of provost, fellow, and professor. A single question remains—how was this power exercised in the royal letter of George III., which followed the emancipating Act of 1793? It was exercised for the purpose and with the effect of admitting Catholics to the University freely, and of bestowing on them every advantage and incident of studentship, one of the most valuable of which was the privilege of becoming scholars. Whether you regard the recital or what may be called the enacting part of the royal letter, no other interpretation of it will seem reasonable. Mr. Butt has observed that it contains no express repeal of disabling charters; but it does contain a general clause, 'any statute or custom, &c., to the contrary notwithstanding,' by which their repeal is fully reached, and which is, in terms, the same with that introduced into the Act of 1793, for the purpose of enabling Catholics to enter into any lay corporation except that of Trinity College. The words must have the same effect in the two instruments, and this is a decisive answer to my learned friend. But, passing from this, and looking to the recital of the statute, it appears, oddly enough, to vary from the provisions of that statute itself, and to vary from it for the purpose of enlarging its operation. The statute expresses a design to enable Catholics to 'enter into the University,' which is translated in the letter thus—'*admitti in numerum studiosorum.*' Now, the word 'studiosi,' as it is employed in the charter of Elizabeth, and in the succeeding charters, presents always the very largest and most comprehensive description

of all those who study in the College. It is larger than 'studentes' or 'scholares,' and whilst those words vary in their meaning in different places, sometimes referring to classes of greater extent than those which, at other times, they indicate, 'studiosi' is always *nomen generalissimum*, and designates the entire body of persons engaged in literary pursuits. So that, if the King had laboured to select an expression most available to include all orders in the University, and remove exclusion as to all, this is the very one he would have chosen. Then, if there be doubt about the word 'admitti,' in the enacting part of the letter, and if we read that part in connection with the recital, 'admitti in numerum studiosorum,' it would seem to indicate as large an exertion of his authority in opening the University as it was possible for him to make.

My learned friend, Mr. Butt, has been very jocular and very triumphant in referring to the argument—the able, and clear, and convincing argument—of my learned friend Mr. Flanagan on this subject. He says that as the word 'studiosi' includes the provost and the fellows, as well as the scholars and the students, it is absurd to rely upon the use of it, whilst we admit that provostship and fellowship remain closed against us. But there is no absurdity whatever. We say that the King exerted as large an enabling power as he possessed. The statute law forbade him to admit to provostship and fellowship. But for that statute law, his letter would have admitted to them; and we only claim that the words shall be operative, so far as they can operate, according to the purpose of the monarch, and the acts of the legislature. There is in this no absurdity, but a great deal of plain reason; and the triumph of my friend was premature and unfounded. Then, looking beyond the recital, to the declaration of the object of the King, we find him professing his great regard for his Roman Catholic

subjects, and his earnest wish 'ut iidem instituantur bonis artibus et literis;'—as emphatic an avowal as can well be conceived of a design to advance their education, not in a niggard spirit, or with inefficient aid, but with such enlargement of means and opportunities as might adequately carry out so great a purpose. And then, when we come to the enacting words, 'admitti in Collegium,' what is there to limit their action to the mere privilege of studentship? What is there to show, that the admitted students were not designed to enjoy the common rights and immunities of the place they had attained?

Mr. Moore has said that, having regard to the state of the College before 1794, the Court must feel itself strongly coerced, before it can concede the right of the Catholic to scholarship. With all respect for my learned friend, I deny that such is the doctrine of construction on which the Visitors can be required to act. I deny that any such doctrine is known to the law of this country. I believe the very opposite to be the true doctrine, and that on which your Graces are not only authorised, but absolutely bound to act. This is a remedial charter, and it is to be construed liberally. The principle is established by a multitude of cases, and well expressed in a text-book of character, 'Dwarris on Statutes,' page 718:—

A remedial Act shall be so construed as most effectually to meet the beneficial end in view, and to prevent a failure of the remedy. As a general rule, a remedial statute ought to be construed liberally. Receiving an equitable, or rather a benignant interpretation, the letter of the Act will be sometimes enlarged, sometimes restrained, and sometimes it has been said the construction made is contrary to the letter.

A remedial statute is extended to other persons and to other things than those expressly named, and is to be construed in such a manner that it may, as far as possible,

attain the end proposed—(Strange, 253). I need not cite further authority for the proposition I have stated; and, if it be sustained, Mr. Moore was not warranted in his assertion that the Visitors must feel themselves 'strongly coerced' before they can allow our claim. On the contrary, instead of waiting to be 'coerced,' it is their duty to be ready and willing to give the most benignant construction to a remedial charter in favour of the subject's right. The policy of the charter is chiefly to be considered, and everything is to be done in advancement of that policy. And can words more comprehensive be imagined, than those which are employed to indicate the intentions of the Sovereign? Acting on the common and established principles of construction, your Graces are bound to give effect to those words, and carry out those intentions in a spirit of generous liberality. And if you do so, there can be no doubt as to your judgment.

It is admitted by the College—and the admission has been always acted on—that the royal letter removed the disabilities of Catholics as to studentship. Between the student and the scholar there is no distinction, I have shown, in the statutes or the charters, as to religious qualification. They stand together, and why should Catholics be admitted into the one class and excluded from the other? Why should not the removal of disabilities as to the one involve the removal of disabilities as to the other? A scholarship is a mere incident to studentship—an advantage given to promote the progress of youth in knowledge, especially if they be poor; and on what principle shall the Catholic be allowed to enjoy his studentship, and denied the further beneficial results of the permission? It is declared by the Board to be doubtful whether the word 'scholares,' in the description of the Corporation, does not extend to all the students of the House, and the terms are

clearly interchangeable, almost throughout the charters. Why should the admission to College be construed to mean admission amongst a peculiar class of students, and not admission amongst the rest—amongst those who are endowed as well as amongst those who are not endowed? It is further declared by the Board that 'a scholarship was given to the student at the commencement of his college course, to assist him in prosecuting the general studies, as required by the University.' And again: 'We shall ever feel too much interest in the scholars to wish that the scholarship should become, what it was never intended to be, an ultimate reward, instead of an assistance to encourage and reward a young man's exertions in the commencement of his honourable career.' It is quite plain, from the nature of the institution, and from those avowals, that scholarship is, as we insist, incident to the place of student, and created for the purpose of assisting young men in the difficulties of their opening life. Why should such an incident be denied to Roman Catholics? When a man is admitted to a corporation he is eligible to its highest office, unless there be some specific personal disqualification. If a man be admitted to Parliament, he has a right to become Speaker, and hold every place of trust incident to membership, in the absence of some law to the contrary. And why should a different rule prevail as to the student of Trinity College? Why should his admission to that College not carry with it the privileges which naturally and properly belong to all who are admitted? The words 'admitti in Collegium' cannot be taken in the mere literal sense, as Catholics were admissible to the College before 1794, although the duties imposed upon them would not have permitted them to remain in it. The Visitors must take those words in a more extended meaning, and so the Board have held; for they not only give to Catholics admission

as students, but also sizarships, exhibitions, and other benefits of the College. Then, the literal sense cannot be relied on; and, if not, how far are the Court to go? Why should they add to admission the benefit of the library, and to that the benefit of premiums, and to that the benefit of sizarships, and stop short at scholarships, which are quite as much the incident of admission as any of these things? There are no words in the charter to exclude the natural assumption that the King, who gave the admission, meant to give its consequences also; and as there was no peculiar disqualification for scholarship, either in the statutes or the charters, in relation to religion, no peculiar or special words were necessary to create a title to the place.

Is there anything in that place, in the conditions of its attainment or the duties it imposes, to invalidate the conclusion in our favour, which is plainly to be drawn from the policy of the royal letter and its words? There is nothing. The qualifications of the scholar are, in terms, '*inopia, ingenium, doctrina et virtus*.' Another qualification, '*religio*,' which is a part of the conditions of the fellow's election, is no condition of the scholar. His duties have no connection with religion, more than those of any other student in the University. He does not administer the Sacrament, as the provost—he does not teach and preach as the fellow—he has no one obligation to discharge, no one declaration to utter, no one office to sustain, which, in any way, requires of him a profession of the Protestant faith. There is no reason whatsoever for making his place sectarian; and if there be not, why should the policy of the law be contravened? why should the essential incidents of the Catholic's admission be taken from him? Why, in the absence of all positive and clear restriction, should the majority of the Queen's Irish subjects be deprived of an important means of

advancement in those 'good arts and letters,' for the cultivation of which they have had the University opened to their children? The College has thought proper to admit Catholics to sizarships, though to them there is no more express admission than to scholarships. They both were instituted plainly for the same purpose—to promote the progress of the student in literary endeavours. Both were equally denied to Catholics before 1794. Both originally imposed servile duties. Both entitled the holders of them to support from the College funds. They are equally free from necessary connection with any peculiar form of religion; and why access to the worse place should be opened, and to the better closed, it is not easy to discover.

Dr. Longfield has said, that admission to scholarships will create an interference with the Protestant Church, by diverting from its uses a portion of the funds of the College. The very same observation would apply to sizarship, which is described in the charters as a burthen to the institution. Nay, that observation would apply with equal force to the very admission of Catholics as students, for it interfered with the monopoly of knowledge, which was formerly enjoyed by the Protestants of Ireland; when, as was rightly noted by Edmund Burke, the denial of civil liberty to her Catholic inhabitants was, with much prudence and propriety, accompanied by a denial of those intellectual advantages which would have enabled them to value and achieve it. There is, therefore, no force in the argument to which I have been adverting.

As to the statement with which Mr. Moore concluded his able speech, that, by giving a mere literal interpretation to the royal letter, you will concede everything to which the appellant is entitled, I utterly protest against it. You are to go beyond the literal sense, and to act in the spirit of

the law; you are to regard the reason of the remedy, and prevent a failure of it by referring to the mere words in which it is conveyed. *Qui hæret in literâ, hæret in cortice.* If you adhere to the literal sense, you condemn the College, which, since 1794, by granting to Catholics premiums, and exhibitions, and sizarships, has manifestly gone beyond that sense, and practically construed the charter on a principle far more liberal and just than that according to which you are now invited to interpret it. Nay, more, you will be driven to the absurdity of asserting that mere admission to the University, without any of its incidents or benefits, save that of obtaining degrees, was the only bounty which the Crown bestowed on Catholics; although that admission seems to have been open to them without any exercise of the royal favour. This is not the principle of construction which is approved by reason or sustained by law, and your Graces, I say, with respectful confidence, cannot dream of acting upon it.

It has been said by Mr. Butt, and the observation might have been spared—it was urged by him alone—that a long course of collegiate practice has sealed this question against us. My Lords, it has done no such thing. The contemporaneous exposition of a statute is only of force when it has had the construction, in the words of Lord Coke, 'of the sages of the law who lived about the time, or soon after it was made.' But of this royal letter we have no such exposition; and the mere delay in asking a remedy for wrong does not make us less entitled to demand it. The reason of that delay is lamentably plain. The Catholics of Ireland, of whose faith it is my privilege and my pride to be, were still an enslaved people in 1794. Much time went by before they grew, in wealth and influence, to a capacity of fitly asserting their civil rights; and their emancipation was not consummated until more

than thirty years had passed after their admission to the University. They were struggling for political franchises, and they had enough to do in their assertion of political claims. Few of them, very few, comparatively, entered Trinity College, and none of those who did, appear to have desired to undergo the toil, and trouble, and expense of contesting the judgment of its rulers. But, as soon as the Relief Bill of 1829 was passed, the question rose into importance, and, in 1836, it was broadly raised in the Queen's Bench by Mr. Callaghan. Fatality in the conduct of the cause, and the early death of the appellant, rendered the proceedings abortive; but now, at the end of a few years more, the discussion is renewed, and a decision is inevitable. The circumstances of the country and the times abundantly account for the lateness of our appeal, and that which was the result of the civil disabilities, and the social embarrassment of the Catholics of Ireland can in no way be made a pretext for perpetuating the illegal exclusion of which they complain. If the appellant could ever have established the right which he asserts, it is as perfect now as it would have been in 1795. No lapse of years can sanction a custom unauthorised by the statutes of the College, and they expressly proclaim that their royal author would not permit 'quod per consuetudinem ullam, aut diuturnum aliquem abusum, aut actum quemcumque, verbis aut intentione dictorum statutorum derogetur.'

My Lords, it is time that I should end an argument which has wearied you and exhausted myself, but which my deep sense of the importance of the interest at stake has forbidden me to shorten. You are now to decide this great question, according to the provisions of the statutes of the realm, and the charters of the College, and especially of the Charter of 1794. And, sitting here, as the representatives of the Sovereign, to expound the meaning of that

royal charter, you will remember that its purpose was benignant and its operation remedial. You will regard it with a view to the policy by which it was dictated, and you will consider how best that wise and generous policy may be enforced. You are not to labour to discover how little concession to the Catholics of Ireland will satisfy its terms, but rather how much it may reasonably, by the largest liberality of construction, be held to warrant. You are not to be astute in cutting down the bounty of the Crown and the privileges of the subject, but rather in giving full effect to the former, and full extension to the latter. The object of the charter of 1794 is plain. It sought to afford to Catholics the means of Collegiate instruction. The want of that instruction was the mischief to be rectified—the bestowal of it was the benefit to be conferred—and you are bound, I repeat, by the very rudimental principles of the British law, to put upon that enabling charter the interpretation most favourable to those for whose good it was framed. And, this being so, why should it not be held to open scholarships to Catholics? What is there in it to indicate that the King did not thus intend to exercise, and did not thus exercise, in fact, his undoubted power so to open them? Why should the taking of degrees have been permitted to the Catholic, and an important means of reaching them denied? Why should he be capable of obtaining a higher position in the University as a student (the Board admit he may), and refused an inferior position as a scholar? Why should you declare that, when the gates of this College were thrown open, the privilege of admission did not involve the natural and proper benefits of admission? What words are there in his letter to intimate that, when the King unsealed the fountain of knowledge to his subjects, he meant to close against them one of the avenues by which it is most successfully approached? If scholarship be established

as the provost and fellows have avowed, as an encouragement to intellectual effort in the commencement of a young man's course, what is it but an incident to his studentship, an aid to his progress as a student, and on what reasonable ground can it be withheld from the Catholic, to whom all other incidents of studentship belong? In the place of the scholar, it is demonstrated that there is nothing to make it a sectarian place—nothing in the objects—nothing in the qualifications—nothing in the oath—nothing in the duties belonging to it. How does it consist with the policy of an enfranchising charter that the very class of the people whom it was expressly given to improve and to exalt, and who, from their social position, when it was so given, most of all needed every means of advancement, shall be deprived of the advantages of scholarship, in spite of the declared design of the Sovereign that they should be encouraged in the cultivation of arts and letters?

The policy of the law is with us; the words are large enough to carry out the policy; it was for the respondents to rely on some positive restriction to modify that policy and contract the operation of those words; they have failed to do so, and our right should be established. The governing offices of this University have been made by the legislature the peculiar property of Protestants. With them our appeal has no concern; but we confidently submit that the place of scholar, which was instituted for the support of youth in its early struggles, especially when straitened circumstances make those struggles painful, should now belong to all who may deserve it; and we pray that, notwithstanding the practice of the College for fifty years, and the tardy assertion of the claims of the Catholics of Ireland, your Graces will right the wrong which has been done, and forbid that abuse shall be consecrated by usage or error established by time.

On the conclusion of the arguments, the Assessor 'submitted an opinion' to the visitors. He held that the cultivation of the Protestant religion had been one principal object for which Trinity College was established, and the cultivation of learning another, but that the learning was to be in a Protestant connection and direction. Further he said, 'I think it was the clear intention of the Crown, by the statute of 1794, merely to give Roman Catholics the benefit of a liberal education and the right to obtain degrees, but without allowing them to become members of the Corporation of Trinity College, or in any manner changing its Protestant character. And for these reasons, I advise the visitors to dismiss Mr. Heron's appeal.' Which they accordingly did.

[By the late Mr. Fawcett's Bill for the abolition of tests in Trinity College, Dublin, which passed through Parliament in 1873, every office in the College has been thrown open to persons of all religious denominations.]

ARGUMENT DELIVERED IN THE COURT OF QUEEN'S BENCH, JANUARY 26, 1850, *IN THE CASE OF THE QUEEN* v. *CONWAY.*

INTRODUCTORY NOTE.

THE case in which the following argument was delivered arose out of one of those disgraceful affrays which have unhappily so often attended the annual celebrations of the great Orange anniversary in the north of Ireland. In this, as in other cases, the outrages had their origin in the determination of the Orangemen to march in procession through a Catholic district, although other lines of march were open to them, and in this, as in other cases, there was an absolute conflict of evidence as to the side from which the first act of violence came. In the result the Catholic village of Dolly's Brae was wrecked and in great part burned, and several of the inhabitants were killed.[1] Certain magistrates who were members of the Orange Society, and who were charged with having taken part in the procession, afterwards sat on the bench of justice to decide on the guilt or innocence of their fellow Orangemen. The Government issued a commission of inquiry to report on the circumstances of the case. The Commissioner appointed was Mr. Berwick, Q.C., afterwards judge of the Court of Bankruptcy. The Dublin 'Evening Post'—a journal said to be the organ in Ireland of Lord Clarendon's Government — commented in very strong language upon the conduct of the Orangemen; and Mr. John Jardine—one of the leaders of the procession—made an application to the Court of Queen's Bench on January 16, 1850, for liberty to file a criminal information against Mr. Fred W. Conway, the proprietor and editor of the journal in question. The alleged ground of the application was the publication by Mr. Conway of certain documents which, Mr. Jardine stated, would prejudice him if he were ever brought to trial for his part in the Dolly's Brae affair. A conditional order was obtained, against which, on January 26, Mr. Conway showed cause.

Mr. Napier and Mr. Whiteside were heard for Mr. Jardine in favour of making the conditional order absolute. Mr. Martley and Mr. O'Hagan appeared for Mr. Conway in resistance.

[1] *Vide* Note D, at the end of the volume.

ARGUMENT.

My Lords,—I am, with my friend, Mr. Martley, of counsel for Mr. Conway, to show cause to your lordships, against the conditional order in this case. In one, and perhaps only in one, of the opinions which Mr. Napier has stated to the Court, I perfectly concur with him. The question mooted upon this motion is a question of the greatest importance to the press and to the people of the empire; for, if it prevail, a new doctrine will be established—a doctrine which no lawyer has heretofore propounded, which no tribunal has heretofore affirmed—a doctrine fatal to the legitimate discussion of public matters, and pregnant with injury to the dearest interests of a free community.—But I trust I shall satisfy your lordships that you must refuse the application of the prosecutor, because it is without precedent, without authority, and, as I shall demonstrate, against all principle.

And, being so, I aver broadly and boldly, that it is not a *bonâ fide* application—that it has been concocted not with the purpose of warding from Mr. John Jardine any real danger, or securing to him any real right—not for the purpose of placing Mr. Conway at the bar of a criminal tribunal to answer for a criminal offence—but for other purposes altogether, affecting persons not before this Court, and interests with which this Court has no concern. My friend, Mr. Napier, denies that he is a party to any such design:—I give him the full benefit of the denial; I am

willing to regard him as an advocate, acting upon instructions which he has professionally received; but, looking to the whole facts and circumstances of the case—the period at which Mr. Jardine claims the protection of your lordships—the position in which he stands, according to his own sworn statement—the candid confession of the counsel who obtained the conditional order, that it was not intended to injure Mr. Conway, 'a scholar and a gentleman,' as he was courteously described by my learned friend—the assaults which have been made, during the argument, not upon my client, who is here to defend himself against any imputation, but upon those who are not here—who are not represented here—who had no right or power to intervene in this proceeding—no reasonable man can doubt that it is aimed to accomplish an object which no one has ventured to avow.

With what were your lordships occupied for long hours on Saturday? With a discussion of the proceedings of the Executive Government of Ireland—with the legality of a commission issued by that Government—with the conduct of the Commissioner, acting under the warrant of the Viceroy. Mr. Conway was scarcely named, and named but to be praised; and odd enough it seemed, that the gentleman with whom Mr. John Jardine professes desire to deal as a criminal, should have been almost the only human being spoken of by his counsel in terms of compliment and commendation. It did occur to me, whilst I listened to the vehement declamation of Mr. Whiteside, that a stranger coming into this Court, on Saturday, might easily have been induced to imagine he listened, not to a grave debate upon a legal question with reference to a public journalist, but to a rehearsal, before the Queen's Irish Judges, of a small political drama, to be enacted, on the first opportunity, in the Imperial Parliament. Let Mr. Jardine say

what he may—let his counsel deny what they may, according to their instructions—your lordships, removed beyond and above the mists and heats of factious strife, and calmly judging of the motives and ends of those whom they unhappily envelope, will have no difficulty, on a review of the circumstances under which this motion has been made, in reaching the conclusion—that its object is not the prevention of wrong or the vindication of justice, but the advancement of the cause of a political party. And, so believing, you will never allow one of your highest judicial prerogatives to be abused for such a purpose.

I regret that I must advert to some topics which seem to me wholly irrelevant to the question before the Court, and which were most illegitimately introduced into the argument on Saturday; but I should not be doing my duty did I not encounter the case made by the prosecutor, in all its parts. I mean to shrink from the consideration of no single matter which has been put forward on his behalf; and I confidently believe that I shall show, as to every topic and suggestion of his counsel, that he has no shadow of right to the intervention of your lordships—no pretence of justification for converting your Court into a theatre for political discussion. And, first, as to the legality of the commission issued to Mr. Berwick. What relevancy had that topic to the case? Would it follow that Mr. Conway should be prosecuted, even if the issuing of that commission were proved to be utterly unjustifiable? Of course it would not, and all the time that was occupied, on this part of the argument, was only wasted, if the real aim of the motion be that which is avowed.

I shall not trouble your lordships by a discussion of the old authorities, or the modern decision cited by Mr. Whiteside. If the question ever be legitimately raised, I apprehend that the principle indicated in the quotations

from Lord Coke will be found very different from that for which Mr. Whiteside has contended; and, as to the case ruled by your lordship's predecessors, it has no bearing whatever upon that which you are now to decide. We do not rest Mr. Conway's defence on any ground of privilege; he is prepared to sustain the responsibility and abide the consequences of his own acts as a journalist; and an authority which merely establishes that the publication of evidence before a commission is not protected, if that evidence be libellous, does not touch the firm, sure ground on which we rest our cause. If it were necessary, on the other hand, I might call in aid this very authority, because, though the Commission to which it has reference was assailed as illegal, the Court cautiously abstained from saying that it was so. But it is enough to say, that this is not the proceeding in which the legality of such a commission can be tested, and to say further, that for fifty years successive Governments of all the parties which have prevailed in this Empire have practically recognised the entire propriety of the course which was adopted in this matter by the Irish Executive.

My lords, times change, and men change with them. The exigencies of society and the silent progress of events sometimes accomplish an actual repeal of laws, whilst they are still formally in operation. Edmund Burke spoke of a domination which despised all legal checks as 'restrained by manners.' The Parliamentary doctrine has been that strangers should be excluded from the House of Commons; yet they have crowded its gallery, in spite of that doctrine. It has been held an undoubted breach of privilege to publish the debates of the Lords or of the Commons. That law had force in the days of the Revolution. When Dr. Johnson came to London its effect could be avoided only covertly and by sufferance. Now, the law remaining pre-

cisely as it was, reason, and public policy, and the necessities of an advancing people, have over-mastered it—the proceedings of the Legislature are reported, openly and universally, and the custom which warrants their publicity, in defiance of an obsolete restriction, has established one of our greatest and most precious social rights, as securely as if it had been proclaimed in a thousand statutes. So with respect to the matter which I am considering—is it not now too late to complain about the issuing of commissions? What party in the State can accuse another in that regard, and be itself unblamed? In Great Britain and in Ireland there have been Education Commissions, and Charity Commissions, and Corporation Commissions, and Poor Law Commissions, and Land Commissions, and a host of others which it would be idle to enumerate—some of them issued at the instance of the Legislature, others at the discretion of the Executive. And here we have had inquiries, over and over again, directed by Viceroy after Viceroy, with reference to transactions of the very nature of those which Mr. Berwick was authorised to investigate. The disastrous events which, in later days, have marked the fatal history of Irish Orangeism—the wreckings of Maghery, the guerilla fight of Portglenone, the riots of Dungannon—have been repeatedly deemed by Governments, Whig and Conservative, to justify and require examination, before learned and judicious men, acting under the Viceregal warrant. Some of the most eminent judges now upon the Irish bench, when officers of the Crown, have authorised such commissions. At such commissions many others of those living expositors of the law have presided; and it will not be easy now to assail a practice so established by usage and recognised by authority—the growth of the necessities of our social state.

And, if ever there was a case in which a Government

might reasonably deem it fit to institute a searching inquiry before such a commission, was not the case in question here that very one? A band of armed Orangemen march through a Catholic district, with the purpose and with the effect, as has been sworn, of irritating and insulting its inhabitants. Multitudes of men muster in defiance of the law, and, in the presence of the authorities of the country and the forces of the Queen, are committed to deadly and savage conflict. Murder and arson, in the broad sunlight, pollute a country which calls itself civilised and Christian. The habitations of humble citizens are sacked and fired. The temple of the living God is violated. Innocent blood —the blood of age and youth, of man and woman—is poured forth, for the thousandth time, on the fields of Ulster, in a horrible libation to the fell spirit of faction, which has blasted our social happiness and withered up our national strength, and made our beautiful and beloved Ireland an object of pitying wonder to the world. Men of rank and influence—one of them a Peer of Parliament—the commissioned keepers of the Queen's peace—are charged with participation in the transaction from which these horrors sprung. Surely an investigation by the Government was not only right but was imperative, looking to the shocking character of the affair itself, to the serious nature of the accusation, to the position of the individuals accused, and to the momentous interests involved: the order of society, and the pure administration of the laws.

The Irish Executive issued the Commission plainly under a conviction that the issue of it was justified by precedents without number, and by a usage of which the beginning cannot be discovered; a conviction, moreover, that it was essential to the right discharge of a great duty to the country. And special care was taken to arm the learned Commissioner with ample power to effectuate the purpose of his

appointment. As one of her Majesty's counsel, Mr. Berwick was a magistrate for every Irish county—he took out his *dedimus* for the county of Down, and he was thus clothed with the double character of Commissioner under the warrant of the Lord-Lieutenant and Justice of the Peace, enabled to take informations and exercise every other function of the office of a Justice.

Passing now from the consideration of the Commission, I come to the more painful duty of adverting to the assault which the prosecutor's counsel has been instructed to make on the Commissioner. My lords, Mr. Berwick is a lawyer, discharging judicial functions—a man of high station, but of station not higher than is his character in his profession and in his country; and I aver that it was a monstrous thing to assail him in this Court, upon a motion with which he has no concern, and on which he could not be represented. I aver, that the allegations made against him are wholly irrelevant to the issue here; and that they have been made most illegitimately, without necessity, without justice, without any colour of propriety or reason. For the interest of my client I have no occasion to advert at all to topics which cannot bear in the least upon his case. But Mr. Berwick is my friend. He is absent; and I should hold myself unworthy to stand in this presence, or to wear this gown, if I did not, on his behalf, repel with all the force and emphasis of which I am capable, the imputations which the prosecutor's counsel have been instructed to fling against him, and brand those imputations as utterly unfounded, unwarrantable, and unjust. Mr. Whiteside, with a supreme talent for ridicule—sometimes a valuable and sometimes a dangerous gift—has endeavoured to scoff at the proceedings of the Commission. His wit falls dull and pointless against an honest man; and I shall only say of it, that it might have been better spared in

relation to transactions the story of which makes the flesh creep and the soul sicken; 'though it make the unskilful laugh, it cannot but make the judicious grieve.'

I shall not waste words upon the *ad captandum* allusions which have been made to the Star Chamber and the Inquisition—to the complaint that persons were brought to give evidence against themselves, though it is notorious that every witness at the inquiry was a voluntary witness—to the authorities laboriously cited to prove what no law student of six months' standing would dream of denying, that a magistrate's court is not technically an open court, or to the attack on Mr. Berwick, because all had access to the place in which he conducted the Commission. On these things I may well spare any observation, save this, that, in my judgment, the proceedings of Courts and Commissions should be open to the world; that, at least, publicity should be the rule, and secrecy the exception; that the breath of free opinion will always have a wholesome operation on tribunals and men intrusted with important public duties—shaming corruption, and checking tyranny, and supporting and heartening the true and the pure.

My lords, two allegations were made against Mr. Berwick to which I must allude. It was confidently stated that he pronounced men guilty whom the magistrates of Castlewellan had declared to be innocent. I deny absolutely that he did any such thing. He attended at the petty sessions, believing that the magistrates had desired information with respect to a legal question. He gave them that information. He told them his own view of the law: and it became their duty to apply that view, if they adopted it, to the facts proved in any individual case. Mr. Berwick prejudged no man,—pronounced on no man's guilt,—gave no opinion with reference to any individual person. He advised as to the law; the magistrates refused

to act upon his advice, and rejected the informations. This is the plain truth, and to state it is to vindicate Mr. Berwick. Further, it was substantially affirmed by the counsel for the prosecutor, that the report of Mr. Berwick did not fairly represent the facts, as proved before him; and they sought to show that it failed to do so, by comparing it with the report published in Newry, and verified by the prosecutor. Was it just or proper that, for any purpose, such a course should have been taken? Mr. Berwick prepares his report, under a solemn sense of his responsibility, as a man and a magistrate. He prepares it from evidence given before him, and states in it the circumstances, as that evidence represented them to his own mind. The evidence has not been published to sustain the report. An application is made against Mr. Conway, and an account of the inquiry is put upon the files of the Court. With that account Mr. Conway had nothing to do. He is advised that, whether its statements be true or false, they cannot affect his position; and, accordingly, he takes no notice of it at all. And, then, in Mr. Berwick's absence, and in the absence of his notes of the evidence, and when there is no possibility of defence for him, in a proceeding to which he is a total stranger, his statement is impugned, because in some respects it appears to vary from that of the reporter of the 'Newry Telegraph.' His reference to the idiot does differ from the representation of the case made by that reporter; but, in the name of common reason and common justice, can that variance be held to justify an assertion that his report is false? The time will come when the question may be fitly raised,—when Mr. Berwick may be heard on his own behalf,—when the proofs, as they were made and recorded by him, may be placed before the world, —and I venture confidently to predict, that he will then appear to have acted in this matter in consistency with the

whole character and conduct of his life,—to have done no act and spoken no word unbecoming a gentleman, a lawyer, and a judge.

I proceed, now, my lords, to the consideration of the letter of Sir Thomas Redington, a document which has been the subject of lengthened comment on the part of the prosecutor. I deny that that letter has any real bearing upon this case, so far as he is individually concerned; but, regarding it as an exposition of the opinion, and a justification of the act, of the Irish Executive Government, I contend, confidently, that the publication of it by Mr. Conway was perfectly justifiable. It is resolved to dismiss certain magistrates. I may not agree with my learned friends on the other side as to that proceeding; but the propriety or impropriety of it is not fit matter for argument at the Bar, or of judgment in this Court. When, however, the Government did determine on a course which was strong and bold, on grounds which seemed sufficient, was it not right that that course should be announced to the country, with a statement of the reasons which dictated its adoption? Accepting the full responsibility of a proceeding of great public importance, was it not fair to those whom it affected,—was it not fitting in relation to the country,—that the Government should say why it deprived these magistrates of the commission of the peace? And, if it was so, and if the reason which justified the act was this,—that those whose office bound them to guard the order of society, and to discountenance illegal acts, and so to comport themselves as to keep beyond suspicion that administration of the laws with which they were intrusted, had been engaged in an assembly which was illegal, and had taken part in a demonstration of factious feeling, which produced consequences so very fearful, was not the Government bound to avow that reason plainly, intelligibly,

and openly? And if, with reference to one of the justices dismissed, there was this further reason—that he, a nobleman, had entertained a charge to which he was substantially a party, and sat in judgment on accused men with whose conduct he had been so identified, that he could not join in their condemnation without declaring his own, or pronounce their innocence without holding himself blameless,—was it not just and necessary that that reason, also, should be honestly proclaimed? And, accordingly, Sir T. Redington speaks of the Orange gathering at Dolly's Brae as an illegal meeting,—and he could have said no less, if he meant to indicate, in any way, the purpose of the Government. The principles which had been stated at Castlewellan by Mr. Berwick, and at Newry by Mr. Jones, the eminent and learned Assistant-Barrister of Down, in his judicial place, and by Her Majesty's Attorney-General, in answer to the query of the northern magistrates, are applied by Sir Thomas Redington to the transactions known to have occurred on the 12th of July, and he does not hesitate to set forth the result of the application of them, and to announce, by the authority of the Lord-Lieutenant, that those who have been implicated in such transactions cannot be permitted to sit on the magisterial bench.

But how idle is it to declaim about this, as an interference with constitutional right and individual safety! How very idle to cite Montesquieu, with the view of demonstrating the importance of keeping distinct the executive and the judicial function! There is no pretence for saying that they were mingled here, but by a clearly false deduction from a true and sound principle. The Lord-Lieutenant, in the letter of Sir Thomas Redington, did not assume the right of judging, or convicting, or acquitting any human being. He simply stated his opinion as to the general law,

on an occasion requiring and amply justifying the expression of it. He referred to no single person, save those whose acts appeared to him to disqualify them for the magistracy. Could any Government well perform its duty, if the right of declaring the legal character of offences, without any pre-judgment of the guilt of the accused, should be denied to it? Can anyone reasonably say that, if a murder is committed —if a deed is done which, according to the undoubted law of the land, is murder—the Executive Government should not call the crime by its proper name, in urging the arrest of the perpetrators, because possibly somebody may be tried for it on some imaginable contingency? Or suppose that, a murder having taken place, a man is charged with the commission of it before justices of the peace, and they think the accusation insufficiently established, and decline, therefore, to hold him to bail, or to commit him, will anyone venture to say, that the Executive shall never be allowed to speak of the atrocity by public advertisement,—say in the 'Hue and Cry,'—as what it unquestionably is, by whomsoever it may have been accomplished, lest the man who has been once so charged may have the accusation renewed against him? It is scarcely conceivable that anyone would contend for such a proposition, yet is it exactly that which has been put forward by the prosecutor's counsel in their denunciation of the letter of Sir Thomas Redington, for speaking of an assembly as unlawful, whilst it affects with personal blame no individual, as a member of that assembly, save those with whom, because they are officers, the Executive claims a right to deal. The plain distinction is, between the statement of an opinion as to the law, which must be pronounced upon by one of the judges of the land, directing, and conclusively directing, a jury, before anyone can suffer evil from it, and the statement of an opinion as to the guilt of an individual, which would be

equally indefensible if made by the representative of the Sovereign or the meanest of her subjects.

I submit, then, my lords, that the argument founded on the letter of Sir Thomas Redington wholly fails the prosecutor. And I submit, further, that it was very idle to assail the giving of an opinion in this matter by the Attorney-General as an improper and unconstitutional act. I do not mean to say that there may not be, in the proper place and at the proper time, a serious question raised, as to a practice which has long prevailed in these countries, of advising magistrates, at their own desire, from the seat of Government. That may be the subject of fair discussion as an abstract public question; but how preposterous it is to say that the Executive or the Attorney-General did wrongly, under the special circumstances to which the objection has reference, in answering the inquiry of Mr. Scott for the assistance of himself and his brethren! I should like to know what would have been said, if the answer had been refused? My learned friends would then, indeed, have had a topic on which they might have dilated with some show of reason,—but, as the matter stands, their complaint is utterly without foundation.

My observations on the letter of Sir Thomas Redington are generally applicable to the report of Mr. Berwick, so far as the prosecutor has anything to do with either of those documents. Mr. Berwick expresses his opinion on the general law. He makes no reference to any individual. He makes no reference at all to Mr. Jardine. He says simply this:—that he attended at the Petty Sessions in Castlewellan—that he told the justices his view of the law as to illegal assemblies—that they would not accept his interpretation of it—and that he trusts the delay, in a proceeding so important to the vindication of the law and the establishment of the public peace, will soon be removed. The plain

meaning and effect of the passage which has been so greatly discussed is this :—that Mr. Berwick trusts the law, as the law stands, will be enforced against those who have really broken it; but he pronounces no judgment on anyone as having done so,—he does not profess to know or to condemn anyone who should be made amenable to justice. Having stated thereafter the legal principle, he hopes that it will be applied in cases to which, by the proper tribunals, it may be found applicable, in point of fact. Neither in the letter nor in the report, I repeat, is there any naming of, or allusion to, or complaint against, Mr. Jardine. Neither by the one nor by the other has he been injured in the very least; and I charge, my lords, the fact of his perfect quiescence from October 9, 1849, when the letter appeared, and October 18, 1849, when the report was published, until January 16, 1850, as proving to demonstration that he was not so injured,—that he did not believe himself injured,—that his complaint of injury is a mere afterthought,—that his case is not a true case put forward with a true purpose, or entitled to be considered with any favour by the Court. If he ever had any right to come here, that right was perfect on October 9, and your lordships will not listen to that man who attempts, at the end of such a period, to complain of a grievance of which he ought to have complained, and undoubtedly would have complained, had he thought it a real grievance at all, three months ago.

I come now, my lords, more directly to consider the grounds on which the prosecutor proceeds, and I find it stated by Lord Mansfield in a case of authority (Rex *v.* Robinson, 1 W., B-542), that there are four things to be considered, before the Court of Queen's Bench shall grant a criminal information. First, the merits of the person applying for it; secondly, the time of the application;

thirdly, the suspicious state of the case, *ex evidentia rei*; and, fourthly, the consequences of granting the information. Every one of these things seems to me material to be regarded by your lordships in the case now before you. And, first, as to the merits of the prosecutor. It may be, that the same rule precisely does not apply in a case such as is now presented to the Court, as in a case of libel, but, undoubtedly, the general principle is, that a man who appeals to the extraordinary jurisdiction of this Court should be free from blame in the matters with respect to which his application is made (Rex *v.* Wright, 2 Chitty; Rex *v.* Gregory, 1 P. and Dav. 110). Now I shall only say, as to Mr. Jardine, that he comes to seek the protection of the highest criminal tribunal in the country, avowing that he was at the head of a procession made memorable by the almost unparalleled outrages of which your lordships have already heard—that he had the insignia of Orangeism upon his person—that he was a recognised leader of the party—and that he deliberately refused to advise the adoption of any line of march except that through Dolly's Brae. It will be for the Court to judge, whether the prosecutor be a meritorious person, in relation to the transactions with respect to which he seeks that it shall grant a criminal information.

I have spoken, already, as to the time at which the application was made, and I apprehend that, according to the practice of the Court, founded on a substantial basis of principle, your lordships cannot make this conditional order absolute, in aid of a person who thought proper to make no efforts for his own protection during the months which have elapsed since the publication of the papers which, he now asserts, are so deeply detrimental to him. In this case, the objection, as to time, is substantial and not merely technical, for, if it be sustained, it manifests

such a *mala fides* in the entire proceeding, that the Court should refuse to give it any countenance. Lord Mansfield's third condition comes powerfully in aid of this argument, as to time; and I pray your lordships to consider, when I shall discuss the particular publications relied upon by my learned friends, whether there be a single one of them, subsequent to that of October 18, on which any demand of a mere conditional order for an information could have been even colourably grounded? I have not the shadow of a doubt that there is not a single one; and, if this be so, I put it confidently to the Court, that there is no pretence for making absolute the order.

But, my lords, what is the prosecutor's case? It is not a case of libel. Mr. Jardine is not named—is not, directly or indirectly, the subject of attack in any one of the publications of which he is advised to complain. He could maintain no indictment—he could maintain no action for a libel. Mr. Conway never heard of him, or knew of his existence, until the conditional order in this case was pronounced. I advert to this, because a considerable portion of the argument of my learned friends appeared to me to proceed upon a misapprehension of the real charge, and to apply to a case of libel which can, in no way, and to no extent, be properly confounded with the case before the Court. The prosecutor's only charge is this, that the publications of which he complains were intended, and were calculated, to affect him injuriously upon a future trial. To this I shall fully address myself; and I hesitate not to say that, if any man does really interfere with the administration of justice—if any man does attempt to deprive his fellow man, charged with an offence, of the protection which the Law and the Constitution assure to all the people of the realm—if any man does aim in any way to prejudge a case which must be tried, and by corruption prejudice

and prepossess the minds of those who are to try it, such a man is gravely criminal, and should be sternly dealt with. But, before the Court can be put in action in such a matter, it must consider two things: first, whether the prosecutor is really in peril? and, next, what is the nature of the assault which is made upon him? Consider the position of the prosecutor, and the conduct of the defendant, in relation to these two things, and you will find no sufficient evidence that Mr. John Jardine is in the slightest jeopardy. There is no proof to lead to the conclusion that he will ever be tried at all; and, beyond a doubt, he is subject to no charge. No coroner's inquest affects him by its verdict—no magistrate has taken informations against him—no grand jury has preferred a bill of indictment on which he may be arraigned. He is as free at this moment from any actual accusation, so far as the Court can judge, as any man in the entire community. My friend, Mr. Napier, felt the difficulty of his position, in this regard, and sought to escape from it by an effort of ingenuity, which, I take leave to say, was very unsuccessful; his argument involved errors in fact and fallacies in logic. He contended ingeniously and vigorously—first, that Mr. Berwick and the Executive Government had pronounced the prosecutor a guilty man, and that, therefore, he must certainly be tried; and, again, he contended, that as magistrates had been dismissed for refusing to take informations against Mr. Jardine, the Government was bound to effectuate that justice, the obstruction of which it had so punished, and to place him, as it has plainly the power to place him, before a criminal tribunal. Now, unfortunately for the argument of Mr. Napier, the foundation of fact on which he bases his reasoning is no foundation at all; and the reasoning and the fact sink hopelessly together. No opinion, as I have already urged, was expressed by Mr. Berwick or

by the Government with reference to this prosecutor, or any other individual man. The only opinion expressed by him or them regarded the law of the country, which circumstances might, or might not, make applicable to him. There has been no opinion given by anyone, at any time, that Mr. Jardine was, in reality, a criminal. Mr. Berwick said no such thing. Sir Thomas Redington said no such thing. They both said, merely, that, under certain conditions, a certain assembly became unlawful; and neither of them ever asserted that Mr. Jardine was a guilty man. The second proposition of fact is as erroneous as the first. The magistrates were not dismissed for refusing to take informations against Mr. Jardine and his brethren. Two of those magistrates (the Messrs. Beers) do not appear to have attended at the petty sessions of Castlewellan at all, and they could not have been dismissed for declining to do that which they had no opportunity of doing. Lord Roden did go to the petty sessions, and his presence there was made the subject of rebuke, not because of his refusal to take informations, but on the ground that, having been implicated in the proceedings of the Orange procession, he ought not to have interfered at all—he ought not to have made himself at once a judge and party, and declined to take informations against others, which, if they had been properly tendered, might have been preferred against himself. That is the case expressly made in the letter of Sir Thomas Redington. The facts, therefore, being other than they were imagined to be by my learned friend, he has not advanced his case one jot by an argument which would have been forcible, if it had not proceeded on a totally false assumption.

But we are taunted because Mr. Conway has not sworn positively that Mr. Jardine will not be prosecuted, and we are told that it would have been the easiest thing

in the world to learn from the law officers of the Crown their intentions in his regard. As to this I need only say, that Mr. Conway has done all that any man could do under the circumstances in which he is placed, or that the Court could possibly require him to do. He states that there is no proceeding pending against the prosecutor, and asserts his total ignorance of the intentions of the Executive Government in his regard. I am addressing judges every one of whom has been a law officer, and I need only say,—not anticipating the course which my learned friends will pursue when they attain official rank,—that any of your lordships heretofore would probably have considered an application for intelligence as to the intentions of Government in relation to future criminal proceedings extremely unreasonable and little entitled to favourable attention. It is foolish to say that, in this matter, Mr. Conway could have done more than he has done; and I believe he has done enough to accomplish the defeat of this application.

Before I pass from the argument of Mr. Napier, I must advert to one of his suggestions, which, for its peculiarity and comicality, may properly be recalled to the recollection of your lordships. Mr. Napier contended, as I understood him, that Mr. Jardine was entitled to carry his motion, all the more because informations had not been taken against him; for, argued my learned friend, will you put a man in a worse position in this Court than that which he would hold if he were now impeached as an accused person? This was reasoning, I submit, which proved a little too much; for, if it was good for anything, it demonstrated that, on the one hand, the man who is indicted has a better claim to the protection of the Court from injurious interference with his trial than the man who has merely information sworn against him; and, on the other, that the man who

has never been accused at all has a better claim to that protection than the man who is held to bail for an imputed crime. When I heard this curious bit of reasoning, I thought of the line in the play,—

> My wound is great because it is so small;

and the famous response,—

> Then it were greater, were it none at all.

On his own showing, and on all the facts disclosed to the Court, I state confidently that Mr. John Jardine is not, at this moment, an accused man,—that he has no charge pending against him,—that your lordships have no means of judging whether such a charge will ever be made. I may conceive that he ought to be prosecuted; you may believe that there are grounds for prosecution against him; but there is no proof that a prosecution will, in fact, take place; and your lordships will not speculate on the probability that there may be a future trial to warrant the exercise of that jurisdiction which may deprive my client of his right to have the protection of the finding of a grand jury should Mr. Jardine venture to bring him before the ordinary tribunals of the country. All the cases which have been cited (Rex *v.* Fleet, Rex *v.* Joliff, Rex *v.* Lee), rightly understood, are authorities against Mr. Jardine's application,—for, in all of them, two essential conditions were fulfilled before the Court could be induced to act. A charge is pending against the person who complains, and the person of whom he complains has assailed him individually. Here both these conditions are wholly wanting. Here, no charge is pending, and no attack is made. I have proved abundantly that no charge is pending. The want of all attack I shall demonstrate by going through the articles to which the prosecutor's affidavit has referred.

[Mr. O'Hagan then went at length, and with great minuteness, into an analysis of each publication of the 'Dublin Evening Post,' portions of which were abstracted in the affidavit. He (Mr. O'Hagan) contended that they were not correctly or fairly represented in it—that they were perfectly fair, and reasonable, and justifiable discussions of public matters, of which the prosecutor had no right whatever to complain. He called the attention of the Court to a number of extracts, with reference to the Dolly's Brae affair, from the 'Times,' 'Chronicle,' 'Northern Whig,' and 'Banner of Ulster,' embodied in the articles,—to the replies with which some of them encounter the statements of the Grand Orange Lodge,—and to the letters of Lord Massarene and the Rev. Mr. Trench, on which the prosecutor had thought proper to rely. He then proceeded :—]

Is it possible that this Court, when it has learned the nature, the spirit, and the tendency of those publications, should hesitate to pronounce them perfectly justifiable—as free from criminal purpose as they are manifestly free from evil tendency ? Is it to be said that a journalist, who fairly and temperately discusses a question which occupies the attention of the entire country, and is deeply important to its permanent well-being, shall be subjected to a criminal prosecution, because he states facts beyond all controversy and inferences which no reasonable being can dispute? These articles conclusively demonstrate the perfect truth of every portion of Mr. Conway's case. They prove that he has acted fairly and honestly, in the discharge of his public duty, in reference to a transaction which every man in a position of influence at the press was bound to discuss. They prove, that the strongest observations were provoked by assaults upon the other side. Many of the articles are replies to the statements of the Grand Lodge; and is Mr. Jardine to be heard in this Court when he complains of a fair and manly answer to the chiefs of the body to which he belongs?

Mr. Napier, Q.C.: The report is not from the body to which he belongs.

Mr. O'Hagan, Q.C.: What body was it? Was it not the Orange body?

Mr. Napier: It was the report of the Grand Orange Lodge.

Mr. O'Hagan: That is a nice distinction—I am not initiated—but I presume that the Grand Lodge is grand by comparison with others less grand than itself; that each of them is wholly composed of Orangemen, and that all of them together constitute the force of Orangeism; I find that Mr. Jardine was, upon his own showing, a leader at Dolly's Brae, heading an Orange procession and decorated with Orange trappings, and I am to be told that the report of the Grand Orange Lodge was not issued from the body with which he is connected.—I repeat my observation:—Has Mr. John Jardine any right to complain of the articles of Mr. Conway, which were provoked by the publications of the chiefs of his own party? Has he any right to complain of the letter of Lord Massarene, written in reply to an invitation in which his lordship is desired to affix his name to an address to Lord Roden—an invitation coming from the Orangemen and compelling an answer, which the prosecutor does not altogether like? Has he a right to complain of the letter of the Rev. Mr. Trench, in which that gentleman protests, on behalf of his order and his religion, against the proceedings of other clergymen of his own Church, assembled in public meeting, and proclaiming their feelings in favour of Orangeism? By what fatuity was the prosecutor led to spread upon the face of his affidavit the paragraph which I shall read from the letter of this good minister of the Established Church, and to ground upon that paragraph his demand that, for the publication of it, Mr. Conway should be criminally pro-

secuted? Here is the passage of the letter which Mr. Jardine has been instructed to make a part of his case. Speaking of the address of a clergyman at a meeting in Belfast, Mr. Trench says:—

'You are reported to have said, approvingly, "one female (in the Orange procession), seeing there was no gunwadding, cut up her under-petticoat and made some; another, seeing something which she thought might be wavering on the part of the men of the lodge with which she walked, snatched up a standard, and led the way forward." You here applaud a woman for "leading the way forward":—to what? To the perpetration of the deeds thus described by Mr. Berwick, the Commissioner appointed to investigate the case, and whom I know to be a truly impartial judge. "One little boy, ten years old, was deliberately fired at, and shot while running across a field; Mr. Fitzmaurice stopped a man in the act of firing at a girl, who was rushing from her father's house; an old woman of seventy was murdered; and the skull of an idiot beaten in with the butts of their muskets. Another old woman was severely beaten in her house; while another, who was subsequently saved by the police, was much injured, and left in her house which had been set on fire; an inoffensive man was taken out of his house, dragged to his garden and stabbed to death, by three men with bayonets, in the sight of some of his family." Dear sir, are not these the deeds of fiends, rather than men?'

Does this prosecutor contend that the Grand Orange Lodge should have been permitted to issue its manifesto without a reply? Does he say, that when one clergyman uttered such expressions as are set out in our extract, another should not have been at liberty to enter his solemn protest in the name of charity and religion, and to denounce, as fiendish, crimes so brutal and unmanly that it is barely possible to imagine their occurrence on this fair earth, amongst creatures wearing the human shape, and believing in the God who made them?—Do they insist, upon the other side, that this Orange body was to be quietly allowed

to use all the influences of the platform and the press, and that no one should have ventured to whisper a word in answer to their statements? Do they insist, that the journals of Ireland and of England should have been dumb —should have uttered no one protest in the name of outraged humanity—no one appeal on behalf of violated law —no one aspiration for the redemption of a land cursed with atrocities of such hideous and unnatural enormity? The prosecutor was a bold man to raise this issue, and ground his case on publications such as these.

My lords, I deceive myself, if you will have any difficulty in deciding that the articles in the 'Evening Post,' taken one by one, and taken altogether, wholly fail, in the very least degree, to justify Mr. Jardine's application. They do not refer to him at all,—they are fair, open, legitimate discussions of matters of great public interest. They are prompted by no malice, and bear no shadow of evidence of any evil purpose. They have done no injury to the prosecutor.—It is idle and absurd to say that they have. And, if this be true, I ask your lordships, how can they justify the issue of a criminal information? How can you grant such an information, in this case, if a journalist is ever to be permitted to deal boldly and freely with public questions, whilst he abstains from assault on private character, or outrage on private feeling, or injury to private interests? How can you grant it, if there is ever to be legitimate comment on public crime,—if the Press is not to be silent in every case, in which it is merely possible that somebody, at some future period, on some possible contingency, may be made amenable to the law? My lords, I ask you, in Lord Mansfield's words, to look to the consequences of granting this information. I ask you to pause long and consider well, before you do a judicial act which must be pregnant with results so novel and so startling.

I ask you to observe, that the principle which the prosecutor requires you to affirm, would absolutely, at this moment, render the whole Press of the country liable to criminal prosecution, in reference to the transactions at Dolly's Brae,—for every class and order of that Press, representing all the various parties and opinions of the country, have been engaged in open and needful discussion of those outrages,—their circumstances, their causes, and their influences. In the great reviews, in the monthly magazines, and the daily papers, writers on every side have freely uttered their opinions—on a subject which was felt by all of them to be of vast moment and high interest to the entire community; and, if this prosecutor can succeed, there is not a periodical in the empire,—Catholic or Protestant, Orange or Liberal,—which may not be assailed by persons complaining that they are injured, prospectively and possibly, and that there has been interference with the course of public justice in their regard. The occupants of the hill of Magheramayo may prosecute the 'Quarterly' and the 'Standard,' and all the ablest organs of Conservative opinion, whilst Mr. Jardine, flushed with his victory over the 'Evening Post,' may renew his warfare against the 'Edinburgh Review,' and induce some of those who marched under his banner to Tollymore Park,—to bring to justice the 'Times' and the 'Chronicle,' and the host of journals which united with them and Mr. Conway in speaking, truly and strongly, of an occurrence which they deemed so very foul. There will be no end to criminal informations; the Bar may flourish, but the Press will find its occupation gone.

My lords, you will never adopt a principle such as this. You will not now, for the first time, establish a precedent which would so fetter free discussion, suppress all true utterance of the general sentiment on matters vitally affecting the order and the happiness of society, and shield

great public crimes from public denunciation. You will not say, that all shall be coerced to silence when an outrage has been done, or obliged to speak of it in fearful whispers, lest, in the progress of events, and at a time which may never come, some one may be hindered by the expression of the horror with which it fills the universal mind. You will not say that,—because, after the commission of such an outrage, a man has been accused of some connection with it, and has been heard before the primary tribunal and discharged from the accusation,—no one shall venture to describe that outrage, as it is, and as the whole world knows it is, because of the possibility that that accusation may be renewed. Finally, my lords, you will not deal with my client as a criminal, because, in the discharge of his plain duty, he denounced deeds of such stark atrocity, that the mere instincts of our humanity, the primal law written on man's heart by the finger of the Omnipotent, should have deterred from the perpetration of them the rudest savage of the wilderness. You will not condemn him because he refused to be silent, when religion and morality, and the public well-being, demanded open and loud condemnation of flagrant offences against the peace of society and the most sacred laws of God and man,—when the terrible story of them rang through the empire from end to end, and filled the Christian people, wherever it was heard, with deep disgust or incredulous astonishment. On the whole, my lords, I submit to your lordships, that you should refuse this application, because, as I have stated, and as I trust I have proved, it is without precedent, without authority, and against all principle,—because no rule of law, no recorded judgment, no judicial dictum, no doctrine of public policy, no consideration of private right, warrants the exercise of your discretion in favour of a prosecutor who comes before you at a time so late, and in a

position so equivocal,—because the application is one of which the pretence is not the purpose,—plainly designed not to vindicate justice, or to redress wrong, or to secure from injury an individual man, but to make the solemn judgment of this high Court, in the exercise of its extraordinary jurisdiction, subservient to the purposes of a political party.

The Court refused to make the conditional order absolute.

A SPEECH DELIVERED AT THE ARMAGH ASSIZES, JULY 1850, *IN DEFENCE OF BRYAN HANRATTY, INDICTED FOR WILFUL MURDER.*

INTRODUCTORY NOTE.

On May 23, 1850, Robert Lindsay Mauleverer, a land-agent who had the management of a small property situate in the parish of Upper Creggan, in the County of Armagh, was murdered in broad daylight after a desperate struggle, on the high road between the villages of Creggan and Culloville, which are only one mile and a half asunder. The murder was of the agrarian class. Mr. Mauleverer had just recently given two hundred tenants notice to quit. During the excitement which prevailed consequent on the serving of these notices, an eviction, very harshly conducted, took place on the estate, and a strong feeling of resentment was aroused.

At the following Armagh Assizes, on July 11, Bryan Hanratty, John McAlary, and Patrick MacNally were indicted, the first for the actual murder, the others for aiding and abetting. McNally had been the driver of the car upon which Mr. Mauleverer left Creggan. Hanratty and McAlary were arrested an hour after the murder, on the road between Creggan and Dundalk; and the evidence of the police was that they appeared to be in flight, that Hanratty's clothes were stained with blood, and that two fresh wounds on his head were such as might have been made with the stick which Mr. Mauleverer carried, and which bore marks showing that it had been used in self-defence. The evidence against MacNally and McAlary was by no means so strong. Hanratty was accordingly first put on his trial. The presiding judge was Mr. Justice Moore. The Attorney-General, Mr. Monahan (afterwards Lord Chief Justice of the Common Pleas in Ireland), conducted the prosecution. With him were Sir Thomas Staples, Q.C., Mr. McDonnell, Q.C., Mr. Whiteside, Q.C., Mr. Hanna, and Mr. Dix. Mr. O'Hagan stood alone for the defence, and when the case for the prosecution had closed he addressed the jury.

SPEECH.

Gentlemen of the Jury,—At the close of this laborious day, it becomes my duty to address you on behalf of the prisoner, and you will believe me when I assure you, that I am oppressed by the weight of the more than ordinary responsibility which is cast upon me. In every case which must determine by its issue whether a human being shall live or die, the advocate of the accused naturally feels deeply the responsibility of his position; but the peculiar gravity of the crime which is the subject of this solemn trial, the discussion which it has undergone elsewhere, and the public sentiment which it has excited, affect me with no ordinary apprehension, as they embarrass the defence of the prisoner with no common difficulties. The story of a murder done at noon—in the broad sunlight—upon a public high-road—almost beside a railway station-house—has been heard with mingled terror and indignation throughout the kingdom. Money has been lavishly subscribed to aid in bringing vengeance on the murderers. The press has been fierce and vehement in denouncing them, and its invective has been loudly echoed from the walls of Parliament. And, as if the individual crime was not of sufficient atrocity, the bloody records of agrarian outrage have been opened—the memory of the foulest deeds which have made horrible the war of classes in our unhappy country has been revived—if not with the purpose, at least with the result, of infuriating the general mind in relation to this fearful homicide, and

blackening the reputation of the district in which it occurred.[1] Under such circumstances, is it wonderful that I should fear lest the accumulated indignation that fills so many hearts may be visited, not on the outrage, but upon the individual who is charged with the doing of it—lest accusation and conviction may run too close together—lest, as has happened heretofore and often, eager prosecutors, and alarmed juries, may lose the temperate and balanced judgment which beseems the discharge of their momentous functions, may mistake zeal for justice, and think too lightly of the sacrifice of one wretched life, so that they may vindicate the violated law, and maintain the order of society? Pardon me if I implore you to allow such influences to have no power over you.

The duty you are called to do is plain as it is important. You are to say, upon your oaths, whether the prisoner is guilty of this murder? If the evidence against him be in your minds clear, conclusive, and coercive, find him guilty. But remember, as you stand in the presence of the God on whose Holy Gospel you have sworn to make true deliverance between the Crown and the accused, that unless the evidence *be* clear, conclusive, and coercive, guilty you cannot find him—though you may have suspicion—though you may have doubt—though you may have read and heard enough to bias honest understandings, and harden kindly and generous hearts. Remember, that if, from any motive, or mixture of motives, you be persuaded to convict a man

[1] A letter appeared in the *Times* of May 30 from the Coroner who had held the inquest on Mr. Mauleverer, accounting for the murder by the desperation into which the people were driven by the wholesale evictions which were taking place; and the *Times* commented on this letter in a very remarkable leading article, which from beginning to end denounced in unmeasured terms the system of evicting in Ireland—this is one passage out of many of the same character: 'The murder of Mr. Mauleverer is the hideous result of some most fearful wrong. Such an event is indeed a warning that we 'should put our house in order." '

whose individual guilt is not proved home upon him beyond all shadow of reasonable question, the conviction so obtained will be a murder, not one jot less foul than that for which you condemn him to die upon a gibbet—nay, more foul will it be, for it will be a judicial murder, done with awful deliberation, and under the prostituted forms of law.

Pardon me, again I pray you, for adjuring you to keep strictly and sternly within the limits of your duty, to banish from your minds all extraneous influences, to hold your jury-box sacred from prejudice or prepossession, as you would preserve your souls from perdition, or your bodies from the plague. If I needed any excuse for so adjuring you, I might have found it, not only in the nature of the charge, in the writings of journalists, in the speeches of legislators, but in the array of counsel who prosecute before you. Her Majesty's Attorney-General, three of Her Majesty's counsel, and two others of my learned friends stand on the one side. I am alone on the other. All that ability and experience can accomplish will be done for the prosecution. For the defence, I can only trust to my cause, and to the integrity and intelligence of the jury.

But I do not complain. The importance attached to the case is manifest from the unexampled preparation of the Crown. It has strained its strength and lavished its vast resources to secure a conviction. Its advisers are justified in taking every fair measure which they may consider necessary to punish crime: for the law must be paramount, if we would maintain the fabric of society, and guard the blessings of civilisation. But, fully admitting this, I have a right to demand of honest jurors, when they see all the might of authority on the one side, and a miserable, friendless peasant on the other, that they shall be, on that account, more vigilant and careful, lest, through

fault of mine or theirs, wrong beyond all retrieval be done to the weak, and power prevail to the overthrow of justice.

I have said that I do not complain of the formidable band of prosecutors who are marshalled against me; but with great respect, personally and professionally, for my friend, the Attorney-General, I do complain of the mode in which he opened his case—of the topics which he introduced, and the tone in which he urged them. He said that he would not appeal to your passions, and he proceeded to speak to you, very passionately, on subjects illegitimately introduced, not relevant to the issue you are trying, and calculated, if they had operation at all, to excite your feelings against the prisoner. He said that he would prove his statements; but many of them which were most material he did not prove, and others his own witnesses disproved. What right had the Attorney-General to make observations on the condition of the country, on the relations of classes, on the existence of an alleged combination illegally interfering with the rights of agents and landlords? Not a particle of evidence has he given to sustain his allegations, in this regard,—not a particle of evidence could he legally have offered to sustain them; and if he had proved them everyone, he had no colour of justification for using them against the prisoner. He is on trial for his life. The sole question is, was he the murderer of Mr. Mauleverer? And how is that question to be decided by references to agrarian combination, to the rights of property, and the wrongs of proprietors? I am here to satisfy you that you cannot convict this man of the crime charged against him. I am not here to enter on a discussion about the state of your country or any portion of it. I aver that the Attorney-General had no sort of right to advert to such matters—that his introduction of them was

only calculated to rouse passions and prejudices injurious to the accused; and that even if his assertions had been sustained by the most conclusive proof, they would have been wholly improper in such a case. I complain, I repeat, of this portion of the speech of my learned friend, but I need refer to it no further. He has given me nothing, in the way of proof, to answer or discuss, and I decline peremptorily, in a case of life and death, to make this court of justice an arena for debating political and social questions. We may not debate them fitly, over the grave of a murdered gentleman, or whilst a trembling prisoner pleads before his country for his life.

I must add another word as to this part of the speech of the Attorney-General. What right had he to say that, in a populous district, no one could be found to tend or aid Mr. Mauleverer in his agony? It was a fearful charge against a whole community. It was a charge, I take leave to say, which should not have been made, without ample grounds and proof abundant; and no grounds for it have appeared—no proof whatever has been given—nay, more, the charge has been disproved. The Attorney-General answered it with his own lips when he said that no human eye saw the murder done—the evidence of his witnesses answered it, when they deposed that a very short period had elapsed from the perpetration of the crime until the police reached the dead body, and none of the people appeared to have seen it in the meantime. There was not, therefore, the least evidence to support this startling allegation, and I rejoice that it was so, for the sake of a district which has been greatly vilified, and for the sake of our country and our nature.

Come with me now, and consider the evidence which has been offered for the Crown. I shall go through it all and examine every part of it, and, if I have succeeded in

inducing you to apply your minds, dispassionately and calmly, to the true issue in the case, and if I can fix your attention exclusively upon the proofs with which alone you are bound, by your oaths, to deal, I believe I shall satisfy you that you cannot convict the prisoner. I shall follow the Attorney-General through all his statements, and I shall demonstrate to you that, one by one, and one after another, the circumstances on which he relied have failed him, and his case has so broken and crumbled down, that you can never ground on it a verdict of guilty.

What was that case when he presented it, plausibly and ably? It was a case of circumstantial evidence. No witness saw the outrage perpetrated,—no witness swears that the prisoner was a party to it. The mystery of that deed of blood has not been dispelled, and direct proof there is none to fix the guilt of it on any human being. But, says the Attorney-General, 'the facts that I have established should lead the jury to an inference on which they may safely and satisfactorily ground a conviction.' I am not here to deny that, in some cases, circumstantial evidence is the only evidence that can be given, and in some cases is the most persuasive evidence which can be addressed to the mind of man. If the circumstances are clearly proved—so clearly and conclusively that there can be no doubt with respect to them, and if they are of such a nature as to be necessarily and entirely inconsistent with the possibility of the innocence of the accused,—they must irresistibly induce a belief of his guilt, and in such a case a jury is bound to act, as upon evidence of the most direct character. But, if the circumstances be not sufficiently established, or if, being so, they are such as may be consistent with the possibility of the prisoner's innocence, if a reasonable hypothesis can be suggested, which may reconcile with them the supposition that some other may be the guilty

person, then the proof becomes insufficient, and no jury should venture to find upon it. It may create suspicion—it may create doubt—it may make the truth of the accusation very probable; but, suspicion the gravest, doubt the most perplexing, mere probability, though it be extremely strong, will not warrant a conviction which rational certainty alone can justify. At the best, strong-headed and sound-hearted men will pause and consider long, before they act on circumstantial evidence. The human understanding is fallible and clouded; the best and the wisest are prone to err. Our very senses continually deceive us, and the intelligence which they convey to one person, as to the same objects, under apparently the same conditions and relations, is different from that which they convey to another. And when we are required to proceed, not on their direct testimony, but on inferences from facts which they ascertain, and when we have thus to encounter the double fallibility of sense and of intellect, how very cautious should we be, lest we err in our conclusions, especially when on our decision absolutely depends the existence of a fellow-creature! How often, in the course of our existence, have we, all of us, been placed in positions of a doubtful and equivocal kind, in which, though entirely blameless, we might have found it difficult or impossible to relieve ourselves from suspicion or accusation, naturally suggested by facts, which were yet consistent with our freedom from all real guilt! How often have judges and juries,—sage judges and conscientious juries,—seeking only to know truth and do justice, but, trusting to circumstantial evidence, arrived at conclusions fatal to the innocent and the source of unending sorrow to themselves! How often do the annals of our jurisprudence record the execution of unhappy persons, whose perfect blamelessness has been established, years after they have slept in dis-

honoured graves! These things I say, and more I might say to the same purpose, not to deny the force of the evidence of circumstances, but to insist on the great necessity for caution, the solemn duty, the fearful responsibility, which press upon those to whom the law commits the fate of a man for a time, and, it may be, for eternity, that they shall not lightly, on such evidence, pronounce the word of doom.

Remembering this, and especially remembering that, as I have insisted, circumstantial evidence, to be satisfactory, must be inconsistent with the reasonable possibility of the innocence of the accused, proceed with me to examine the proofs on which the Attorney-General relies, and judge whether, considered in the light of these principles, they are at all sufficient te establish the guilt of the prisoner? My learned friend has made a sort of cumulative argument, stating circumstance after circumstance, and so weaving them together as, apparently, to mesh in the accused beyond the chance of escape. I shall take these circumstances one by one, and ask you to contrast the statement with the evidence, and then to say if it be possible that you can convict? First, the Attorney-General promised that he would prove the 'dogging' of Mr. Mauleverer by the prisoner. He used that expressive word again and again; he relied with vehemence upon the charge; and, if he had sustained it, it would have been very formidable. Has he done so? Has he not utterly failed to do so? What is the proof? That the prisoner, who lives near Crossmaglen, was seen in the street of that town on the morning of the murder. That is all,—absolutely all. It does not appear that he saw Mr. Mauleverer; that he was near the hotel; that he did a thing or said a word to connect him in the least degree with the impending tragedy. Where is the 'dogging'? Where is the scintilla of evidence to give the

slightest colour to such a statement? There is none whatever. The car-boy is indirectly assailed; but it is sworn by Mr. M'Donald, the hotel-keeper, that, having had that boy in his employment for years, he has found no reason to doubt the integrity or distrust the character of his servant,—that, having himself known of Mr. Mauleverer's intention to depart only three-quarters of an hour before his actual departure, the boy was selected by the merest accident to drive the car,—that any one of three or four persons who were working at a bog would have been chosen to do so, had he arrived when the boy chanced to come in with a load of turf,—and that, very plainly, there could have been no collusion or preconcert between that boy and the prisoner, or any other person, after he was directed to go with Mr. Mauleverer.

The charge of 'dogging' is completely disposed of, and you will not dream of entertaining it for a moment. Next, the Attorney-General undertook to show that the prisoner had altered his usual dress and substituted a cap for a hat, in such a way as to indicate a consciousness of guilty purpose. It is enough to say, as to this, that there is no jot of proof to sustain the statement. It is unsupported by the testimony of a single witness. Next, the Attorney-General said that the prisoner had given no account of his intended occupations for the day, when he left his sister's house in the morning. This appears to be true, but is wholly immaterial. Is any man to be convicted of a capital offence,—nay, is any man to have his character, in the least degree, impeached on such a ground as this? Why should the prisoner have given such an account? Why should his omission to give it be imputed to him for crime? The imputation is idle, and you will scout it as you ought. Next, the Attorney-General said that he would prove contradictions in the statements of the prisoner,

made after his arrest. In this, again, he has entirely failed. There is no evidence of any such contradiction. You observed that I took leave to interrupt the Attorney-General at this portion of his address. I knew the danger of such allegations as he was making, which might not afterwards be capable of proof. He persisted, but I was right, for he was unable to establish what he had sent, in assertion, to your jury-box. Next, the Attorney-General proposed to show that the prisoner had been followed, almost at once, from the scene of the murder, that he had been hotly pursued, and that he was taken, after having passed, in company with another, a number of people who guided the police upon his track. This was a most important part of the case, and, accordingly, it was greatly laboured; and many witnesses were called to prove that two men had passed them on the day in question, after the hour at which the murder was committed, and on the road leading to the spot at which the arrest was made. But not a witness identified the prisoner as one of the two men, and, had the matter rested even so, I should have called on you to hold that he was not affected by such evidence. But so it did not rest. Two persons who had been examined for the Crown before the Grand Jury—who had been so proclaimed worthy of credit and competent to give useful testimony—whose names were on the back of the indictment, were not produced. It was my right to have them called; and the Attorney-General fairly yielded it. Patrick Waters came upon the table; and then ensued a scene such as has been rarely witnessed in a court of justice. That old man swore, that he had known the prisoner for thirty years, that he saw the two men who passed from the place of the murder, and that the prisoner was not one of the two. The value of such evidence was great—it seemed to startle the Attorney-General—he asked

to whom the man had told this story first, and the ready answer was, that he told it to Mr. Singleton, the stipendiary magistrate, on the evening of the murder. You saw what then occurred; and no man in that box will ever forget it. Mr. Singleton deposed, at once, that the old man had sworn untruly. He was answered by an exclamation of indignant wonder, and he was then driven to admit that the statement was made to him on the evening of the murder, but he did not notice it, indeed, because Waters had not made it 'distinctly' or 'plumply.' In my experience, such a transaction is wholly without parallel. The case is one of life and death—the testimony of the witness, if good for anything, tells powerfully in favour of the prisoner—but not one syllable that may be favourable to him finds its way into the informations; and when, fortunately for truth and justice, the witness is induced to repeat, in open court, that which he had proclaimed to the magistrate, when the matter was fresh in his recollection, he is met by a positive denial. Of that denial, taken in connection with what followed instantly, be you the judges.

I do not usually deal in harsh epithets, and, if it be ever right to do so, there is no necessity in this case for such a course. The thing is its own best commentary. I shall only say that, for the honour in which I hold the laws, and the vital interest which all good men have in making the administration of them respected by the people, I devoutly trust that such a scene may never be re-enacted before any Irish tribunal. For me, as the prisoner's advocate, it is enough to say that Mr. Singleton has corroborated conclusively the testimony of Patrick Waters. If you had doubt of it before, now you can have none. It utterly destroys the connection which the Attorney-General laboured to establish between the prisoner and the men whom the police pursued, and colours the whole case for

the prosecution. Waters is distinctly sustained by Kelly, another witness for the Crown, whom I required to be produced; and it is notable that, although this witness, also, said he had informed an officer of justice, on the evening of the murder, that the prisoner was not one of the two men, and although the officer is present here, and although no word of the statement appears in the informations, that officer is not produced to confront or contradict the witness, and manifestly for the sufficient reason that he would have corroborated Kelly, as Singleton had corroborated Waters. On this branch of the case—and it is of the gravest moment—I ask you, have I not answered the Attorney-General?

What remains? Bit by bit I have so far crumbled to pieces the statement and the proof on which the prosecution has been rested. I come now to the circumstances of the arrest—the blood on the prisoner's person—the cut upon his head—the hair upon the stick. The Attorney-General relies on the circumstances of the arrest, as proving a guilty consciousness; I rely upon them as far more consistent with a consciousness of innocence. The police follow the prisoner and his companion—the former run—the prisoner and his companion do not run at all. The police require them to stop, and they stop accordingly, and then they are arrested. The prisoner demands the cause; the constable will not inform him, and he seizes the carbine. Is there anything strange in this, on the supposition that he did not feel himself a criminal? Would not many a man of hot temper and high spirit, receiving such a reply from a policeman, have acted in the same way; and am I not justified in saying that all this is, at least, as consistent with consciousness of innocence as with consciousness of guilt?

But, there was blood upon the prisoner; his clothes

were 'saturated' with blood, said the Attorney-General; and it was the blood of Mr. Mauleverer. 'Saturated with blood!' Did you hear the evidence? Some blood was within the collar of his shirt—some on the collar of his coat—some on the collar of his vest—and a speck, now wholly imperceptible, even to the keen eyes of a constable, upon his trousers. And the Attorney-General says that his clothes were 'saturated' with blood! Was ever over-statement more strangely exaggerated? And the blood was Mr. Mauleverer's! Plainly it was the prisoner's own. He had a fresh cut on his head—the blood had trickled from it, and the marks on the coat and shirt were precisely such as the trickling would have caused. So I dispose of that portion of the case for the prosecution. Instantly on his arrest, the prisoner accounted for the wound on his head in a way which perfectly consists with probability. He cannot prove his statements—his lips are sealed—the person who might have told what he had witnessed is indicted also, and cannot be heard. But jurors are not to presume against a prisoner because circumstance and accident leave him without a witness, and, unless there be clear proof against him, you are not to brand his statements as untrue. Is there such proof? Yes, answers the Attorney-General. The stick of Mr. Mauleverer fitted into the wound on the head of the accused—the hair upon it is his hair—can there be further question of his guilt? But, first, are you satisfied as to the fitting of the stick? Look at it: remember the description of the cut, and judge whether it is probable that, by such an instrument, such a wound could have been inflicted? Again, what examination would have required nicer skill, more enlarged experience, more cautious vigilance, on the part of the person making it, to render his evidence of the slightest value? Is it certain that, in such a case, any examination

could be safely trusted? And what is the examination actually made? A police officer—a very respectable officer—who is not content with his proper duties of keeping the peace and arresting malefactors, proceeds to interrogate the prisoner in the barrack, and then converts himself into a medical inspector, and undertakes to do that which the greatest surgical capacity and knowledge would scarcely justify any man in venturing to attempt. If the comparison was to be relied upon, why was it not made by some one to whom you could listen with an assurance that you might have some trust in the accuracy of his observation, and his trained ability to make it rightly? Two doctors were in attendance at the inquest, and neither of them is asked a question on this subject; and, surely, I need not appeal to your reason and your humanity to discard the vague, ignorant, and flippant testimony which the prosecutors presented, instead of that better evidence which they might have presented, and which it was their bounden duty to present, if they chose to rely on this extraordinary species of circumstantial proof.

But what of the hair upon the stick? Why, in the first place, it is remarkable, that so small was the quantity, if any there was on it, when it was found upon the road, that the policeman who had it for some time observed no hair at all. Next, it was put into the car which conveyed the body of Mr. Mauleverer—his hair was upon the stone which the constable produced, and no one has been asked whether the hair upon the stone and the hair upon the stick were alike or different? And, lastly, the evidence of the eminent physician who is produced to prove the similarity of his hair with the hair of the prisoner, is absolutely good for nothing. I asked him, Could he distinguish between human hair and the hair of brutes? He admitted that he could not; and no one, after such an admission, can dream of

relying on his comparison of one portion of human hair with another portion. I might have objected to Dr. Robinson's testimony altogether, but I did not, for I knew how absurd it was to imagine that reasonable and just jurors would permit themselves to be led to sacrifice a human life, and send an immortal creature to his dread account on grounds so idle, vain, and insufficient. With perfect confidence I put it to you, that you cannot think of acting on the evidence as to the stick and as to the hair, and if you cannot, I as confidently claim your verdict.

I have analysed the entire case. I have discussed it and all its details, and I deceive myself if I have not demonstrated that the proof is wholly insufficient to sustain the statement for the Crown. I deceive myself if, on calm reflection, you do not conclude that I have fulfilled my undertaking, and beaten down, piecemeal, the formidable mass of circumstances which were piled together with such vigour and ingenuity by the Attorney-General. And if I have succeeded so far, I have succeeded altogether; for remember, I pray you, that it lies on the prosecutor to prove the prisoner's guilt, and in nowise on the prisoner to prove his innocence. The law casts round him its merciful protection, and proclaims that every presumption shall be in his favour, until evidence, which no reason can resist, shall put his criminality beyond a doubt. He is not to show negatively that the murder was not done by him; and if his doing of it be not conclusively established, he is entitled to his acquittal, though he call no witness and offer no defence. I say that here there is no such demonstration, and I ask for that acquittal.

Were it needful, there are many things I might urge affirmatively for my client. I might ask you what motive is suggested for the tremendous guilt imputed to him? You were told of ejectments and evictions—but no proof

has been attempted that any of them affected him or could affect him, or that he ever dwelt on any property over which Mr. Mauleverer had the least control. Men do not gratuitously incur the peril of death in this world and damnation in the next. Yet, so far as you have opportunity of judgment, the prisoner had no imaginable interest in compassing this murder. I might entreat you further, to consider the facts connected with the arrest, and ask yourselves whether the prisoner would have been found at such a time in such a place, if he had been the murderer? Look at the map which has been proved in regard to the distances which are marked upon it. Observe that there was ample time for flight before the police could reach the district in which the men were found. They were not two miles from the place of blood—they might easily have been threefold the distance. The case for the Crown is, that the whole population were in collusion with them—yet, they do not hide in the houses or lurk in the bogs through which they pass, though those houses are numerous, and the country affords the amplest facility for escaping observation. The blood on the prisoner's person is not washed away—no attempt to remove it appears to have been made. How shall you reconcile these facts with the supposition of his guilt? If he knew himself guilty, would he have voluntarily remained—without disguise or concealment—on a public way—within reach of the police—with the stains of murder reeking fresh upon him, for no apparent purpose but that his seizure might be unavoidable, and evidence supplied to seal his condemnation? Am I not justified in suggesting to men who know human nature and the courses of human life, that such would not have been the conduct of a wretch pursued by avenging justice, and haunted with the unutterable terrors which hang upon the steps of the assassin? If there are difficulties in the case of the prisoner, are there

not also difficulties in the case of the Crown, and may I not reasonably meet circumstance by circumstance, and oppose probability to probability ?

But I am not driven to such a mode of defence,—I am not required to abandon the advantages which our constitution, always presuming the innocence of the unconvicted, and always tender of the life of man, secures to the accused. It is enough that the prosecvtor has had cast upon him the duty of proving the prisoner's guilt,—of proving it clearly, completely, and conclusively,—that he has failed so to prove it, and that you are bound to refuse a conviction. I shall weary you no more—I have endeavoured to do my duty in this most painful case. Yours you will proceed to do, warily, justly, firmly, and faithfully. I shall press you with no further argument, but blame me not if I pray you to remember what you have heard a thousand times, that the law of this land, of which you are the chosen ministers, will not tolerate the infliction of punishment upon the meanest subject, without decisive proof; that suspicion can never justify a verdict for the smallest offence, to be visited by the lightest penalty, far less for the offence most odious to nature and to Heaven, to which the most horrible of all penalties is incident. Blame me not if I implore you to remember the declaration of one of the purest and greatest of British judges, that, if error there must be, it should be committed rather in acquitting guilt than in condemning innocence, and that the escape of a hundred desperate criminals is not so great an outrage upon justice as the wrongful conviction of the humblest creature who wears the human form. Finally, bear with me, whilst I adjure you to reflect, in anxious thoughtfulness, that what you may do this day can never be undone; that the doom you may pronounce can have, in this world, no reversal; and that if the life which the Creator gave, and which your breath

may extinguish, be taken away, repentance for the taking of it, should it be taken wrongly, will be unavailing as it will be terrible. By further inquiry, doubt may be dispelled, and difficulty removed, and truth established; but, if the irrevocable words are spoken, and a soul is sent into eternity before its time, vain will be the inquiry, useless will be the justification, impossible will be the reparation of the wrong, until that day when all of us, the judge and the juror, the advocate and the accused, shall stand together, in the shivering nakedness of our poor humanity, before our common God. Holding these things in memory, you will worthily discharge your sacred obligations. If you have no doubt of the guilt of the prisoner, you will proclaim him guilty; if doubt you have, you will bid him go free. The spirit of our jurisprudence is not the spirit of vengeance, but the spirit of mercy, which softens and makes dear and venerable the solemn sternness of the law. Be guided by that gentle spirit wisely, and you will best accomplish the true and holy purposes of justice.

[The jury said they felt themselves constrained to give the prisoner the benefit of the doubts which were in their minds, and accordingly he was acquitted.]

A SPEECH DELIVERED IN THE COURT HOUSE, GREEN STREET, DUBLIN, ON DECEMBER 7, 1855, *IN DEFENCE OF THE REV. VLADIMIR PETCHERINE, ACCUSED OF CONTEMPTUOUSLY BURNING THE AUTHORISED VERSION OF THE BIBLE.*

INTRODUCTORY NOTE.

In the month of October 1855 a mission was given in the Roman Catholic Chapel at Kingstown, near Dublin, by the Redemptorist Fathers, at the head of whom was the Rev. Vladimir Petcherine, a Russian by birth. It had come to the knowledge of the missioners that books of an immoral or irreligious character were in circulation through the parish, and, at the exhortation of Father Petcherine, a number of such books were brought to the priest's lodgings, and on November 5 were publicly burned in the chapel yard. It was alleged that a Bible and a copy of the New Testament were among the books so burned, and that leaves of the Authorised Version of the Scriptures had been found in the ashes of the fire.

This report spread, and was naturally greatly exaggerated. It aroused so much excitement among certain classes that the Irish Government instituted a prosecution against Father Petcherine. He was accordingly put upon his trial in the Court House, Green Street, Dublin, on December 7, 1855, charged with having caused a certain copy or copies of the Bible or New Testament to be burnt, with the intention of bringing the Authorised Version of the Holy Scriptures into hatred and contempt, and further with having caused to be burnt certain copies of the Bible with the intent of bringing the Christian

religion into contempt; and there were also other counts in the indictment which varied the nature of the charge.

The case was tried before Mr. Justice Crampton and Baron Green.

The Attorney-General, Mr. Keogh (afterwards Mr. Justice Keogh), the Solicitor-General, Mr. Fitzgerald (the present Lord Fitzgerald), Mr. Plunket, Q.C., Mr. Corballis, Q.C., and Mr. Betagh appeared for the prosecution.

Mr. O'Hagan, Q.C., Sir Colman O'Loghlen, Q.C., Mr. Curran, Mr. H. Kernan, and Mr. Coffey were for the defence.

The trial, which lasted for two days, excited an interest which was not confined to Ireland.

SPEECH.

Gentlemen of the Jury,—I address you, I need not say it, with a feeling of deep interest and a sense of grave responsibility. I have heard, with all the pleasure which ability and eloquence command, the speech of the Attorney-General, and I have no reason to complain of it,—though I may not adopt some of the opinions which it expressed—save in those portions in which my learned friend spoke of my client as a stranger, and entertained the supposition that he is a zealot or a fanatic. A stranger he is—if he can be called a stranger, who, for a large section of the life of man, has dwelt within this empire, doing the noblest service to the religion and the morals of its people. A zealot or a fanatic he is not, and the terms have no just application to him. He is of no mean condition or ordinary character. He is a Christian priest; he is also a ripe scholar, an accomplished orator, and a cultivated gentleman. Of noble birth, in his own country he held a dignified position. He was intrusted with public office in its universities, and had open to him a career of honour; but he abandoned all earthly advantages, and burst all earthly ties, when conscience and duty required the sacrifice. He gave up home and family and old associations and cherished friendships and the hopes of a fair ambition, to devote himself, in utter poverty and self-negation, to the service of the Cross; and, for many a year, he has laboured to advance the immortal interests of his fellow-men, not in the wrangling of hot polemics, or the excitement of sectarian

strife, but in continual effort to purify their moral nature and amend their daily lives. And his success has, I believe, been wonderful, through the impressiveness of his eloquence, the earnestness of his convictions, and the inspiring power of his example. For such a man—standing at the bar of a criminal tribunal, in a strange land, and charged with blasphemy against the Holy Word, which he most deeply venerates, and contempt of the Divine religion for which he has left all that the world holds dear—I cannot fail to feel interest of no common kind. And that interest grows into anxiety, when I know that, to affect the issue of his trial, exaggerated statements, false representations, and malignant slanders have been circulated with unwearied and most successful industry. The cause has been prejudged. The condemnation has forerun the hearing. Faction has made the charge its stalking-horse. Religious zeal has listened to it with eager assumption of its truth; and popular prejudice and passion have been lashed into almost unexampled fury against a man who, with a full consciousness of innocence, has had no opportunity of justification. The press has teemed with imputations of the foulest and fiercest kind against the person, the order, and the faith of the accused. The pulpit and the platform have rung with them to the echo. Placards, in the streets and on the walls of our city, have made them familiar to the passers-by; and, as if all this was not enough to darken the truth and interrupt the course of fair inquiry and crush down a defenceless priest beneath the force of inflamed opinion and over-mastering prejudice, a Protestant Archbishop, one who is foremost in place, as in ability and renown, amongst the prelates of the Irish Church Establishment, has thought it right and becoming to join in the chorus of denunciation, and anticipate the judgment of the law. For I find that Dr. Whately, on the very day on which my

client was held to bail at Kingstown, in a speech delivered before an English assembly, which has been copied largely into the Irish journals, told his audience that the Bible-burners in Dublin were the best friends of the Protestant cause, and that those who burnt the Bible in Dublin assured him of what he had always known and believed—that the Church of Rome was hostile to the Scriptures. The Bible-burners! Those who were burning Bibles in Dublin! Was this language proper to be uttered by any man, and especially by a minister of religion and a lord of Parliament, taking for granted a cardinal fact in controversy between the Crown and the accused, and lending the weight of great station and high authority to work a deadly prejudice against an ordained priest of God—whom even his assailant must hold to be so—whilst his case was still pending and his character and his liberty in peril?

All these things have tended to deprive the traverser of the reasonable chance of a fair trial, and it is not easy for him to bear up against influences so adverse and malignant, and so calculated to pollute the very founts of justice. Regarding their character and natural operation, I and my learned friends felt ourselves bound gravely to consider the propriety of seeking a postponement of this inquiry, until the existing excitement should pass away, and the public mind return to a temper of fairness and moderation. That postponement could not have been resisted by the Crown or denied by the Court. But I have felt strong in the innocence of my client and the honesty of my cause; and, with his fullest sanction, I brave the difficulty of my position, in entire reliance on the integrity and intelligence of an Irish jury. Here, at least, I hope for impartial justice. Here, at least, I expect that the fury of bigotry will be checked and the voice of slander stilled. You will hold your consulting chamber sacred from the intrusion of all

prepossession, sectarian or political, and make a true deliverance, according to your oaths, upon the evidence, and the evidence alone. And I have taken this, the bolder course, with the less hesitation, because I am thoroughly convinced, as a rational man speaking to rational men, that the facts will warrant me in claiming an acquittal at your hands; because, as to the allegations of the indictment, I am prepared to demonstrate that, even on the evidence for the prosecution, no conviction is possible upon any principle known to our criminal law; and, more than this, because I hope to show you that I am not entitled to your verdict merely through legal subtlety or by strict legal right, but that, morally and substantially, my client is guiltless of the offence charged upon him. And I am specially anxious to achieve such a verdict, because it will allay the injurious excitement and subdue the irritation which have been roused by the belief that an outrage has been done to the opinion and the feeling of my Protestant countrymen. I am entirely satisfied that the simple truth of the case, if it be rightly apprehended, will rectify the error and avoid the evil consequences which must flow from it amongst a people, so miserably distracted by religious strife.

What is the charge and what is the proof? The charge is founded on the old common law of England, which made Christianity a part of the Constitution of the realm; and it proclaims my client a blasphemer, a contemner of the religion of the Gospel, a wilful destroyer of the oracles of God! A grave accusation against any man, most grave and fearful against a Christian priest. The charge is not, in my judgment, according to the common law, that any particular version of the Scriptures has been destroyed, or that any particular form of belief has been assailed, but that Christianity itself has been brought into contempt.

This is the offence which the common law condemns, and of this the accused must be found guilty, or not at all.

Will you sustain such a charge upon such evidence? I am assured you will not. You must find, positively, affirmatively, and beyond all reasonable doubt—first, that the traverser burned the Holy Scriptures—that he burned them with full knowledge and deliberate purpose; and next, you must find that he so burned them blasphemously, and with the design of treating the religion of the Redeemer with scorn and contumely. Even should the fact be proved, —and you cannot find it, for the evidence does not warrant such a finding—it will avail the prosecutor nothing, unless the intention be also proved. I controvert the fact. I deny the intention. On the evidence, you cannot affirm the one or impute the other. Father Petcherine neither directed, nor counselled, nor authorised the burning of the Scriptures, nor knew of the burning of them, nor entertained, for a single instant, the infidel and anti-Christian purpose which is the gist and essence of the accusation against him, and, without which, he is blameless before the law.

I am not ignorant that, at the very threshold of my argument, I have to encounter a deep and widespread prejudice, calculated to warp the judgments and cloud the understandings of the most honest men. It is believed, by multitudes in these countries, that the Catholic Church is the enemy of the Holy Bible—that she fears and hates its divine teachings, and would utterly destroy it if she could. This belief has been sedulously circulated—sometimes through ignorance, sometimes through fraud, and sometimes through fanaticism. It is fostered by the teachings of an anti-Catholic literature, enforced from the Protestant pulpit and by the Protestant press, and entertained, with unquestioning assurance, by crowds of the simple Protestant people. The latest proclamation of it has been made, as

I have said already, pending this trial, and on the very day of Father Petcherine's committal, by one of the highest dignitaries and one of the ablest men in the Protestant Establishment. And those who entertain this belief may reasonably think it probable, that the minister of a Church so held to be the Bible's adversary, should also be hostile to it, and willing to aid in its destruction. But is such a belief founded on the evidence of facts, and can you safely base on it an assumption of the antecedent likelihood of my client's guilt—Catholic as he is, priest as he is, clinging to his faith with all the power of his intellect and all the devotion of his heart? The question affects deeply the entire discussion of the case; and I answer to it boldly, that the belief is groundless—that it falsifies the truth of history and all the traditions of the Christian world.

The Catholic Church is not the enemy of the Bible. I affirm it, and I shall prove it. She has not been its enemy. She has been the guardian of its purity and the preserver of its existence, through the vicissitudes of eighteen hundred years. In the gloom of the Catacombs and the splendour of the Basilica, she cherished it with equal reverence. When she saw the seed of Christianity sown in the blood of the martyrs, and braved the persecutions of the despots of the world,—and when those despots bowed before the symbol of Redemption, and she was lifted from her earthly humbleness, and 'reared her mitred head' in courts and palaces, it was equally the object of her unceasing care. She gathered together its scattered fragments—separated the true word of Inspiration from the spurious inventions of presumptuous and deceitful men—made its teachings and its history familiar to her children in her sublime Liturgy—translated it into the language which was familiar to every one who could read at all—asserted its divine authority in her councils—maintained its canonical integrity

against all gainsayers—and transmitted it, from age to age, as the precious inheritance of the Christian people. The saints whom she most reveres were its sagest commentators; and of the army of her white-robed martyrs, whom she commemorates on her festal days, there are many who reached their immortal crowns by refusing, on the rack and in the flames, to desecrate or deny the Holy Book of God.

And when time passed on, and barbarism swept over the earth from its northern fastnesses, and the landmarks of the old civilisation vanished away, and rude violence and savage ignorance threatened to crush for ever the intellect of Europe, the Bible found its shrine in her cathedrals and its sanctuary in her cloisters—there it took refuge, and was saved. Whilst savage conquerors did homage to the defenceless majesty of her pontiffs, and her sacred voice sounded above the din of battles, bringing order from the chaos of convulsed nations, proclaiming the advent of a new social state, giving security to property, supremacy to law, dignity to woman, and freedom to the slave—during all that painful birth-time of our modern world, the monks of the middle ages, holy and toiling unselfish men, laboured by day and by night, in their cells and their scriptoria, and multiplied copies of the record of that Revelation, adorning them with rare illumination and gorgeous blazonry, and perpetuating and diffusing them throughout the earth. And the scholars of those times were adepts in Holy Writ, for, as is testified by the Rev. Dr. Maitland, the very learned librarian of the late Archbishop of Canterbury, 'The writings of the dark ages are made of the Scriptures. . . . The writers thought and spoke, and wrote the thoughts, and words, and phrases of the Bible, and did this constantly and habitually as the natural mode of expressing themselves.' And men of action, men who, if not abounding in literary knowledge, were

rich in love and faith and knightly honour and Christian chivalry, vied with the scholar and the monk in deep reverence for the Word of God, and testified that reverence as best they might, by lavishing their wealth upon it, and clothing it with silver, and gold, and precious stones, and placing it in the open library of the monastery, and beside the high altar of the church, that all might have free access to its divine teachings. Of the whole mediæval time the same learned Protestant, whom I have already cited, further says:—'I do not recollect any instance in which it is recorded that the Scriptures, or any part of them, were treated with indignity or with less than profound respect.' So far, the Catholic Church did not prove herself the enemy of the Bible, when there was unity in Christendom, and none presumed to check the development of her true policy and the manifestation of her real spirit. She had no reason for subterfuge or management. She was supreme and unassailable, and, in her freedom and her power, she guarded that which, by excellence, she named 'The Book,' through the gloom of ignorance, the fury of civil strife, the wreck of dynasties, and the revolutions of the world. So, and so only, the Bible was preserved, in the cloister and the school, and by the endless labours of devoted men, until printing came to give wings to thought and universality to knowledge. And how did the Catholic Church then deal with the Sacred Word? As if to consecrate the birth of the wondrous art, its earliest employment of importance was devoted to the preparation of editions of the Scriptures, which, to this hour, are matchless in their splendour and unequalled in their worth. The first great work undertaken after the invention of printing was the Holy Bible. The *editio princeps* of the Latin Vulgate, known among bibliographers as the Mazarine Bible, was issued before the practice of affixing

dates to printed works had arisen, certainly between 1450 and 1455; and if, in the middle of the fifteenth century, this noble volume commanded the wondering approval of learned men, at the close of that century, the great Complutensian Polyglot, devised by the magnificent Ximenes, far more than eclipsed its fame. The presses of Europe teemed with editions of the Scriptures. France, Belgium, Italy, and Spain were rich in them. Two hundred editions of the Vulgate appeared after the invention of printing and before the completion of Luther's Bible, and more than fifty editions in the vernacular tongues of the various nations were circulated during the same period.[1] Surely these facts, and they are only a very few out of a multitude, to which it is impossible even to allude in this place and on an occasion such as this, demonstrate that the Catholic Church has not been the enemy of the Bible—has not regarded it with dislike or apprehension—has been, through all time, its loving, earnest, and reverent protector!

But what further proof of my position do I need than this very prosecution? Here stand the officers of the Crown prosecuting a Catholic priest, and the prosecution is grounded on no modern statute, on the act of no modern Parliament, but on the old Common Law of England, established by sage judges and enforced by great kings, and sanctioned by holy prelates, ages before Protestantism had risen into being—on that old Common Law which identified the Scriptures with Christianity, and Christianity with the Constitution, and made punishable an assault upon the Word of God, as an assault upon the Constitution and upon Christianity itself. And that Common Law had reference not merely to the ancient Vulgate, but to the translation into the language of the people of which Sir Thomas More has said—'The Holy Bible was, long before

[1] *Vide* Note E. at the end of the volume.

Wycliffe's day, by virtuous and well-learned men translated into the English tongue, and by good and godly people with devotion and soberness well and reverently read.' It seems to me that, on such an occasion, I cannot fitly say more on such a subject.

But men will argue that, though these things be true, we in this land of Ireland are so unfortunately placed as to be denied the benefit of the reading of the Bible—that here, at least, the Catholic Church fears its influence and forbids its circulation. The statement is wholly false. In Dublin alone, one eminent publisher, Mr. Duffy, with the sanction of the Catholic Archbishops, has published three editions of the Douay version within seven years, and disposed of 42,500 copies, and within that period it is well established that more than 100,000 copies have been spread through Ireland. In Belfast, during the episcopates of two dear and venerated friends of mine, one of whom has departed, leaving an illustrious memory,[1] and one of whom still survives,[2] above 308,000 copies of the same version were printed and circulated at the instance of the Catholic Bishops. And all this has been done, and far more than this, though the issue of the Douay translation must be accomplished in the face of great discouragement, for, whilst the printer of the Authorised Version obtains a deduction of twenty-five per cent. on the duty on paper, not one farthing is allowed to those who supply the Word of God, in the translation they accept, to the poorest people in the world. Yet that translation is now spread abroad at prices ranging from 6*d*. to 9*d*. for each copy, and is brought within the reach of the very humblest in the island. It is, therefore, entirely false to say that, here or elsewhere, the Catholic Church is the enemy of the Bible; but it is entirely true that she asserts her authority, as the divinely

[1] The Most Rev. Dr. Croly. [2] The Right Rev. Dr. Denvir.

commissioned teacher of the nations, to expound its meaning—that she does not approve the unadvised and undirected perusal of it by all persons of all ages, and at all times, and that she holds the 'version appointed to be read in churches' in many respects erroneous and unfit for the safe instruction of her people. And is it not notorious that her doctrine, as to the indiscriminate perusal of the inspired volume in all its parts, by old and young, learned and unlearned, has been approved by the wisest men of the Protestant communion? And is it not equally true that her objections to the Authorised Version have been and are sustained by a great body of the most influential Protestant opinion? What says Dr. Whately of the various versions of the Bible? This—a statement which, to some ears, will be strange and startling :—

It is, however, important to remark that when our Church speaks of 'Holy Scripture' as being the rule of faith, and the standard to which everything must be referred in our religious teaching, the term 'Holy Scripture' means—not, as some seem to imagine, our Authorised Version, nor any other version—but the original, as written by the inspired authors themselves, in Hebrew and in Greek. It is to the very works that they composed that the term 'Scripture' is strictly and properly applicable. It is often, indeed, applied to translations of Scripture, and there is no objection to such a use of the word, provided we take care not to be misled by it, and that we do not apply the word 'Scripture' to one translation more than to another. Our Church attributes inspiration to the Apostles and Evangelists, and other writers of those books which we call, collectively, the Bible; it does not attribute inspiration to any translators of the Bible. We have good reason, indeed, to believe that many translations of Scripture into various languages are substantially correct in sense, and give, on the whole, a just view of the meaning of the sacred writers, and of the great doctrines of the Gospel. And one translation may give the sense of the original more exactly than another; but no man has a right to apply the name 'Bible' more to one translation

than to another. As for our Authorised Version—the one in common use in this country—it is so called from its being the one 'authorised to be read in churches,' in order to secure uniformity in our Divine Service, but it was never authorised as the standard of our Church, in the sense of being that 'Holy Scripture' by which it is declared all doctrine is to be proved. Indeed, it was not even composed till several years after the framing of the Thirty-nine Articles, which declare Scripture to be our rule of faith. The version which was at that time in use was one commonly called the 'Bishop's Bible,' parts of which are retained in our Prayer-books—namely, the Psalms and the sentences from Scripture introduced into the Communion Service. But, as I have already said, the framers of our Articles meant by 'Holy Scripture' neither that nor any other version, but—what is most literally and strictly so called—the very works composed by the inspired writers themselves.

Learned and candid Protestants have no sympathy with the spirit of blind bibliolatry with which ignorant and shallow men presume to deny the imperfections of the Anglican Bible. They invite criticism upon it, and amendment of it, and in the current number of the 'Edinburgh Review' I find the Authorised Version condemned, as having been executed in a spirit antagonistic to the true spirit of Christianity, and the reviewer grounding his argument on the opinion of the Archbishop of Canterbury, as to the Calvinistic influences under which it was accomplished. But, more than this, he recommends, as some remedy for so great an evil, the appointment of a perpetual committee to purify the text of the translation, and do for English Protestantism somewhat of that needful service to the integrity of the Word of God, which it has been the unceasing and successful endeavour of the Catholic Church, in all countries and at all times, to achieve for Christendom. On the other hand, Catholic prelates, whilst they have condemned the corruptions and perversions of the Anglican Bible, have been ever ready to recognise its literary worth.

The great Bishop of Kildare and Leighlin, in his examination before the House of Commons in 1825, was asked:—'Do you consider the authorised translation of the Church of England as of a sufficiently perverse quality to merit the description of "the Gospel of the Devil"?' and his answer was—'God forbid that I should so consider it, for though it has many errors, I consider it one of the noblest works—one of the ablest translations which has ever been produced. This I say, whilst I look upon it as abounding in inaccuracies, and having in it many errors.' And a similar opinion in the same year was given jointly to the Commissioners of Education by the four Catholic Archbishops of Ireland. They were men eminent in ability, and learning, and devotion to the faith which they adorned, and they unanimously said, through the Primate, Doctor Curtis—'We agree that the Authorised Version of the Established Church is a very noble and a very fine work. It uses pure language. It surpasses ours by far in point of language—for it is in the nature of a paraphrase, and ours is more literally correct; but we cannot take it, and have not done so, though we have all in our controversial works praised this translation.' I state these things to demonstrate to you that the prelates of the Catholic Church, whilst they guard with earnest jealousy the faith of the people, and sternly resist any interference with it in any way, are not animated by any sentiment of narrow fanaticism, such as the Attorney-General appears to attribute to the traverser. They have no spirit like to that which found expression on the face of the English statute book, until a very recent period, in that infamous enactment by which 'Popish Missals and Rituals,' containing a great proportion of the Sacred Scriptures, and other 'Popish books' of a like character, were required to be seized and burnt, and by which the Crucifix was ordered to be defaced

and returned to its owner. In darker times, multitudes of copies of the Rhemish Bible were openly destroyed, in obedience to the spirit of this statute, and I grieve to say that that infamous spirit still shows itself amongst us, though the statute be abolished, in the iconoclastic fury of a vulgar and impious intolerance. How does it contrast with the opinions I have quoted, and, still more, how does it contrast with the solemn declarations of one of the distinguished persons to whom I have referred, and of another eminent prelate, the late Most Rev. Dr. Kelly, the Catholic Metropolitan of the West, upon this very matter of the public and contemptuous destruction of the Bible? Before the Parliamentary Committee of 1825, these Catholic Bishops were examined, and thus they spoke :—

To Dr. Kelly.—Is it your experience, or have you heard it in such a manner as to believe it, that there have been any particular acts of destruction of the Testament in the Authorised Version in the west of Ireland, either executed or enjoined by the Roman Catholic clergy?

Dr. Kelly.—The directions given to the Roman Catholic clergy in the archdiocese of Tuam are, that if the versions of the Scriptures are not approved of by the Catholic Church, the faithful are to refuse to take them; but if they should be induced to take them they are to be given up into the hands of the clergymen; I have not known of any instance of any clergyman destroying by fire or otherwise any of these Testaments.

Have you heard of sixty, or any number of Testaments, having been thrown into the river at Ballinasloe?

Dr. Kelly.—I have not.

Should you think such an act deserving of censure?

Dr. Kelly.—I think it an improper act to destroy such a book.

To Dr. Doyle.—What is your opinion upon that point?

Dr. Doyle.—I think the same. I think it improper to treat the Word of God in that kind of way. If a single individual, through error or mistake, did such a thing, I might overlook it, but I should think it very wrong.

I might bring living witnesses to the same effect in multitūdes. I might put upon that table ecclesiastic after ecclesiastic, ready to adopt these opinions and affirm this judgment; but evidence such as I have adduced, given without reference to any pending cause or for any temporary purpose,—uttered, as it were, from the honoured graves of wise and holy men,—must be of power, if anything in the world can be so, to correct misconception and establish truth.

I have laboured, so far, to remove a prejudice calculated to work deadly injury to my client and his cause, and I trust I have done something to gain for him and it an impartial hearing. I wish you, at least, to believe, on the authority of the facts I have feebly stated and the proofs I have most imperfectly arrayed, that the traverser is not to be condemned upon any assumption that the Catholic Church is the adversary of Holy Scripture, or that he must be its adversary, because he is her minister. If I have so far opened your minds that you can yield me a fair audience, and regard the merits of my case, my task is accomplished, and I have saved my client. For, on its simple truth, and the evidence which really affects it, I claim your verdict with fearless confidence. This is that case told in plain, brief words. The Redemptorists, of whom Father Petcherine is one, are an order of religious men in the Catholic Church devoted to the teaching of the people, to their moral teaching, and to that exclusively. They lead lives of poverty and self-denial. They pass from place to place, with incessant and enormous labour, toiling for God's honour and the salvation of human souls, seeking no earthly recompense, rejecting all pecuniary remuneration, content if they obtain the poorest food and the humblest raiment. They are forbidden to preach controversy. They do not seek for proselytes. They do not go out on the

highways to insult or irritate their fellow-men—to force their opinions upon others, or stir up evil passions, in the name of that Gospel of love which should bind all humanity in one universal brotherhood. They came to Kingstown. They laboured in the pulpit and the confessional for many days, and a part of their teaching there, as everywhere, had for its object to induce their vast congregations to avoid the reading of immoral and infidel books. They have been in England, and they know that such publications are poured abroad in a foul and noisome flood upon its corrupted people, assailing everything that is sacred in our religion and noble in our nature—proclaiming property a robbery and marriage a bondage—familiarising men and women with crimes which should not even be named in a Christian land—encouraging adultery and incest, and making a jest of murder—mocking at all authority, and trampling on all law—scoffing at morality as a folly, and at religion as a fraud, and, with open and unchecked audacity, denying the existence of the Almighty God. With the horrible results of such publications, elsewhere, the duties of these zealous priests have made them too well acquainted, and they have sought to ward away the evil from the Irish people. Hitherto, that people, though poor and suffering, have been full of hope in Heaven, and wonderfully free from the gross vices which have desolated other and more prosperous nations. Here, at least, infidelity has yet found no abiding place. We have deep reverence for religion and loving trust in the Redeemer of mankind, and, thanks to Divine Providence, there is still manly faith and the stainless purity of woman, amidst

The green hills of holy Ireland.

To maintain this faith and to preserve this purity, the Redemptorist Fathers have held it their solemn duty to resist the introduction of scandalous books, creeping too

fast amongst us, because they know that such books are devilish agents for the destruction of the bodies and the souls of men—that to the individual they bring debasement and to the State decay—deforming the beauty and destroying the grandeur of man's moral nature, and making him a brutal sensualist and a godless reprobate, whilst they sap the foundations of social order and the authority of law, which have their only security in the high sanctions of a nation's virtue and religion. Therefore, at Kingstown, where the mission wrought vast improvement in the Catholic population, Father Petcherine preached against such books, and urged his hearers not only to abstain from the perusal of them, but, for the avoidance of temptation, to follow the example of the Christians of the Apostolic times, and bring them in and give them to the priests. He did not preach against the Bible in any version; he did not ask that any copy of it should be delivered up; he abided strictly by the policy and by the law of his order, avoided all manner of controversy, and denounced immoral works, and immoral works alone. And the people obeyed his call, and multitudes of books were brought to him—pamphlets in bundles—infamous periodicals, which are the daily food of the popular mind of England—translations of sensual novels from the French, and vile English novels, whose very names are an abomination, and he directed the burning of the books so brought, in the full belief that they were all of the class he had denounced, and without the least conception that any Bible, of any version, was amongst them. This is the simple truth, consistent with the facts of the case as already detailed in evidence, consistent with the preaching of the missioner, with all his conduct, and with all his words. He burned no Bible; he knew not that any had been burned; he is absolutely innocent of the act and of the purpose which the indictment charges.

I asked one of the witnesses whether the book which I hold in my hand ('The Mysteries of London') was not one of those amongst the bundles brought to Father Petcherine. And he answered that it was, and that multitudes of the numbers of it were heaped together. I might have spoken to him as to other books of the same class and character, but I confined myself to this, as a sample of the whole. I have looked through portions of it; I had never seen it until I entered this court to-day; and I tell you, that it presents a mass of bestial and revolting impurities adequate, if sin can do so, to bring down God's avenging wrath upon the unhappy people who, in thousands and tens of thousands, week after week, delight to wallow in them. Look at these obscene pictures; regard the tales of worse obscenity which they illustrate; consider the effects they must produce on the heart and understanding of the multitude; remember that they circulate through the length and breadth of England, and tell me if he is not a benefactor to our country who forbids the diffusion of their poison here? Of such books as these—more devastating than the pestilence, more terrible than internecine war, because they pollute the spirit of man, and kill his immortal hopes—my client has been the enemy. Against these he raised his testimony, in warning, and entreaty, and vehement denunciation, and deemed that he was labouring in his Master's service, and advancing the highest interests of his fellow-beings, when he devoted them to the flames. In the mode of his proceeding there may have been ground for captious objection. It may have been misunderstood by honest men; but, in itself, in its design, and its results, it was wholly blameless. Still, I desire to say that, however innocent it may have been and was, I lament, and he laments, that, in a country such as this, occasion even of imagined offence should have been given to any man. By Father Petcherine none was

intended; he did what he deemed an act of usefulness and duty, but it was open to misconception, and it was misconceived; and that which was designed only in advancement of the public morals, has been taken as an insult to the opinion and the feeling of some of the Protestant community. For myself, I repeat, with perfect truth, that I regret this very deeply. I have been from my earliest days the familiar friend of Protestants. They were the companions of my boyhood and the competitors of my youth. From them I gained much of the secular knowledge and the training for public action which have enabled me to battle with the world. And now they are not merely the companions of my daily life, but many of them my dear and honoured and trusted friends. And though I am a Catholic, from the fullest conviction of my intellect, and with all the assurance of a docile and humble faith, I feel sincerely, claiming for myself full freedom of thought and speech, the respect which is due to the principles, the convictions, even the honest prejudices of those who differ from me. Therefore, I lament that any occasion of offence should have been given to any man through inadvertence, or want of knowledge or consideration of the peculiar circumstances of this distracted kingdom. And so does my reverend client. It is his province and his duty to combat error, and proclaim the truth, 'uncaring consequences.' But of the design to treat with public contumely the opinions of any class of Irishmen he has been, and he is, incapable, as he is unconscious.

And now, let me ask you, having told his simple tale as to his motives and his acts, is there any evidence, in this case, upon which you can possibly ground a conviction? Does not my statement commend itself to your understandings as reasonable, and probable, and compatible with all the established facts which have been urged on your atten-

tion? You are not to presume the guilt of the accused. You are to presume his innocence till guilt is proved against him. You are not to convict on suspicion, on surmise, or the straining of evidence, or the suggestions of ingenious lawyers. Your conviction must go on testimony positive, conclusive, and coercive, or it will be a mockery of law and an outrage upon justice. Nay, more, in a case like this, in which the proof is, at best, circumstantial, so far as it affects the traverser, you are bound to exhaust all reasonable possibilities consistent at once with the facts and with his innocence, before you find him guilty. Keeping in view these principles, which are rudimental and settled in our law, ask yourselves, first—were Bibles burnt at all? Is it quite clear to you, that there has been no misconception or misrepresentation in this regard? Are you entirely certain that some of the witnesses to the fact may not be deceiving, or some of them deceived? Is it impossible that management and contrivance may have had to do with the production of those bits of a Bible which have been so ingeniously multiplied and so pompously displayed? But, suppose that one Bible and one Testament were actually consumed, and that there were not more is perfectly demonstrable according to the evidence,—the question remains, is Father Petcherine answerable for their destruction? He is not, if he did not counsel, or command, or knowingly aid in commission of the act—if his real purpose was to destroy immoral books, and he was ignorant of the presence of the Bible and the Testament in the burning pile. What proof is there to fix him with such knowledge, command, or counsel? His lips are sealed; he cannot tell you what he knew, or thought, or purposed. Of all living men he could aid you best to reach the truth on this vexed question: but he is accused, and he must be silent. So far as he is sought to be affected by counsel or command of

his, I shall offer to you the most decisive evidence, which will relieve you from all difficulty; but of his knowledge, and the interior workings of his mind, you must judge by the imperfect aid of the facts which are before you, and grope your way to a just inference as best you can. One thing I shall make clear as the sun's light—that no Bible or Testament was brought to the lodging of Father Petcherine, at his request or with his privity. And, if this be so, how is he answerable for the matters subsequent, even if you should believe that, in the mass of books, a Bible and Testament were really consumed? If, as is conceivable, in the great bundles which have been described, one or two volumes, wholly different in their character from the rest, found their way to the chapel-yard, the traverser is not morally or legally accountable, unless he knew that they were there. And there is no proof that he knew anything of the sort; that he examined the books at all; that he did not, as he may fairly be supposed to have done, assume that they were all such as he had denounced, and deal with them accordingly. Still more, there is no real evidence to show that, at his lodging, before the bundles were removed, or when they were removed, there was amongst them either a Bible or a Testament. But, pass from that lodging and come to the chapel-yard, and remember that it was an open place—people going in and out continually—a crowd assembled—some Catholics and some Protestants—everyone entering who pleased; and, remember more, that the books remained upon the ground within reach of every creature in the throng, for some half-hour, before Father Petcherine arrived, and that, during that considerable period, there was nothing to prevent the casting of any book upon the heap by any person. Are you prepared to make the traverser answer for acts done in his absence? Are you prepared to say, that the acts which give colour to

this prosecution were not so done? Can any man of you, with cool judgment and safe conscience, venture to say so? And if you cannot, is not your duty plain? I care not whether the books in question—two books only—found, even on the assumption that you entirely believe the evidence of the witnesses, one on the top of one barrow, and one on the top of the other,—I care not whether they were put in those places by Catholic or by Protestant, by a foolish friend or an astute enemy of Father Petcherine;—he is not responsible for the act.

The Attorney-General has spoken of religious fanaticism. It has prevailed widely in the world, and wrought lamentable mischief to the best interests of the human race; and it has not been confined to one communion or another, but, from time to time, has manifested itself in all. Now, if an over-zealous Protestant, convinced that he would do his religion service by blackening the fair fame of his fellow-man, because that man was a Catholic priest, and so bringing odium upon the Catholic Church, which he had been taught to hate with a depth of malice in precise proportion to his utter ignorance of her tenets and her spirit; if such a person, remembering the ingenious devices and the pious frauds, which, from time to time, have been exhibited amongst us, deemed it no harm to seize his opportunity on that dark November morning, and put the Bible and Testament quietly upon the barrows, will you make my client answerable for that? Or if, on the other hand, an over-zealous Catholic thought fit to cast them there, that he might demonstrate his deep dislike of Protestantism, must Father Petcherine suffer for his offence? Such men there are, on the one side and the other. There are Protestants whose scorn and hatred of Catholicism know no control of moral restraint or social decency or Christian love. And there are Catholics, who have been roused to answer scorn

with scorn, and hatred with defiance, and stung to fierce retaliation by the sectarian scandals which darken the annals of our time—by continual slanders against all they deem most venerable, against priests and prelates, and the holy women who have given their lives to Charity and Heaven—by outrage on the effigy and profanation of the name of the Supreme Pontiff, whom they revere as the chief of their Church, and Christ's Vicar upon earth—by insult to the images of their canonised Saints, and the Mother of their Redeemer,—by impious assaults upon the Cross itself, and sacrilegious desecration, in the open day, of the Holy of Holies, before which they worship with trembling love and awful reverence! Action provokes reaction; strife breeds strife; and, whilst good and wise men of all denominations bear with each other, and agree to differ, and live in harmony, and exhibit reciprocal deference and respect, sectarian bitterness still lives amongst us, and prompts to deeds as evil as that which was committed, if to the chapel-yard of Kingstown a Protestant zealot brought a Bible and a Testament that he might jeopardise a Catholic priest and disgrace the Catholic Church, or if they were brought by a zealot on the other side, eager to prove his contempt for the religion of his Protestant countrymen. I repeat it: You must exhaust the reasonable possibilities of the case before you dream of imputing guilt to the accused; and I have made these suggestions that you may see how grievous would be the wrong if you should visit on Father Petcherine the consequences of the acts which may have been done by others in his absence, even though you reach the conclusion that there was any burning of a Bible or a Testament at all.

Let me shortly invite your attention to the evidence of the Crown; and I hope to demonstrate to you, by adverting to the statements of the successive witnesses, that, if you

are pressed to convict in this case, you will be asked to do the most monstrous thing which ever was demanded at the hands of a jury in a court of justice. Do you recollect the evidence of the boy Duff? He gave it simply, and I think truthfully. I ask you to consider it, and to say whether, on that evidence alone, I am not entitled, in common fairness, to your verdict. Remember always, I implore you, that the charge is that of wilful and blasphemous burning of the Sacred Scriptures; and the imputation against Father Petcherine is this, that it was his design and desire to bring Christianity into contempt by destroying the Book of God. Gentlemen of the Jury, my learned friend the Attorney-General referred the Court to two cases, and to an old authority, which I entirely adopt as expounding the common law. He referred to cases tried before judges as eminent and learned as any that ever sat on a bench, and he cited those cases for the purpose of instituting a parallel between them and this. But I tell you that if the Attorney-General had been disposed to give me an opportunity of contrast, he could not have done better than by his reference to those cases. What was the case in Mayo? The indictment there was for open, audacious, contumelious destruction of the Scriptures. There was no concealment, nor any pretence of concealment. The very judgment, which my learned friend read, speaks of words of contempt for the Sacred Volume as demonstrating the criminal intention of the utterer. The religion of the man who committed that offence I do not know; but it would seem to me, upon the statement, that he was not a Christian at all. Whether he was or not does not matter much. He was a man who went out openly, resolutely, with the full knowledge of what he was about, and, in the face of the public, deliberately burnt the Scriptures, and proclaimed that he burnt them in

the spirit of contempt. Is that case anything like this? I say it is quite the converse of this. Some such case the counsel for the Crown should have been prepared to establish if they expected a conviction. It is no trifling thing to impute blasphemy to a minister of God; it is no light thing to impute it to a Catholic priest; and the proof should be overwhelming to justify the imputation.

I have disposed of the Mayo case. The case in Londonderry was the same—the case of a man openly, and without concealment, and contemptuously, burning the Sacred Scriptures. That is not this case—it is, again, the converse of this case. Will the Solicitor-General, who is to speak hereafter, tell you that this is like the cases relied on by his leader? Will he tell you, that it is free from doubt and obscurity, as they plainly were? Will he assert, that you can with safe consciences, upon the proof which has been offered, imitate the juries of Londonderry and Mayo, who acted on evidence absolutely unlike, in all respects, the evidence before you? I do not think he will; but, if he do, you will judge between us, and I do not dread your judgment. Now pass again from the cases to the proof; and deal with the charge as it is, upon its own merits. You remember Duff's testimony—it was short, clear, and consistent:—

I and another boy (he said) went into the priest's house, and a number of boys rushed in; the books were under the table; there was a large heap of them there; the books were taken out and put into two wheelbarrows by me and the other boys. . . . I saw a book with a black raised cover; I think it was a New Testament; I did not open it; from its general appearance I thought it was a Bible; it was a small book. . . . When we got into the yard we sat on the barrows waiting till F. Petcherine came; he came shortly after (in half an hour), the books were then on the ground, he said they were to be lit; he went in the direction of the chapel vestry; he came back again in about twenty minutes; the books were then burning; I saw him

standing looking at the fire about five minutes; he went away again to the chapel vestry.

How unlike an ostentatious burning of the Bible does not all this sound! I am here for a man accused of an offence which, though not visited with the last punishment of the law, is an offence, from his circumstances and position, as formidable to him, in the imputation of it, as any that can be imagined. I have not to make my case. Every man is entitled, when he comes into a court of justice, in the condition of a traverser, to say: 'Up to this hour I am innocent—up to this hour no tribunal, constituted with power to judge me, has pronounced me guilty, and the law of the land declares me wholly free from stain or imputation.' He is entitled to say to the Crown, as I now say—'Make out your case; you wish to set aside the presumption of the law, and to establish guilt against a subject of the Queen—establish it beyond a doubt.' There is no evidence that Father Petcherine ever examined the books which he directed to be brought to him. He desired those books to be taken out of his room —they were heaped into wheelbarrows, and when this was done, I repeat it, there is not a particle of testimony upon which you can act, that there was a Bible or Testament in any of the bundles. The little boy said, at first, that he thought there was something like a Testament in the heap. He spoke of a particular book, which he did not open, but which he said was like a Testament. Will my learned friend press this upon you as sufficient proof that, at the moment when those books were taken from the lodging of Father Petcherine, there was a Bible or Testament among them? It is impossible, on Duff's evidence, to reach the conclusion with any safety, that the little volume of which he spoke—without a name upon it, without any peculiar mark or appearance to indicate its character

—it is impossible for you to say that that book, which he never opened, the contents of which he never saw, was a Testament. And, if you cannot, there is no sort of proof that, at the lodging of Father Petcherine, any part of the Scriptures was amongst the books ; and, certainly, there is none that he knew, or had reason to imagine or suspect, that there was any.

Now, go on with me through the subsequent stages of the transaction. The books are put upon the barrows, and wheeled through the open street. A crowd of boys accompanies them. What passed upon the way—how many persons came near the barrows in their progress—who those persons were, or what they did—you are not at all satisfactorily informed; nor is it clear that books might not have been removed from, or added to, the mass before it approached the chapel-yard. When that yard was reached, the barrows were taken in, and the spot on which the fire was lighted was forty yards from the public street. May I not say, in passing, that, if the traverser designed to vex or insult any class of the community, he would not have chosen such a place for such a purpose ? Those who were passing by upon their proper business, outside the chapel gate, could not have known the nature of the fire, or of the substances which it consumed, unless they entered voluntarily and made inquiry; and of course, without such entrance and such inquiry, they could not have encountered cause of annoyance or offence at all. We have evidence that half an hour elapsed after the books had left the house before Father Petcherine arrived at the yard, and, in the meantime, men and women were passing through it, and it was competent, as I have said, for any one in the crowd—Protestant or Catholic—I care not which for the purpose of my argument—to have cast any book he pleased upon the barrows or the fire.

And now, gentlemen, pause and ask yourselves what security would there be for any one, if Father Petcherine should be held responsible on such a state of facts for what might have happened before his arrival? What safety would there be for any one of us, Catholic or Protestant, if, on evidence like that, a traverser could be condemned for the crime another person might plainly have committed? If any man—I cannot too often press the question—a zealot on one side or the other, cast a Bible on that heap of books, is Father Petcherine to be made answerable for the act? He went to the vestry, and it does not appear that, before he did so, he looked at the books in the yard, or at any one of them, or was in a position to judge what volumes were there at all. I ask you, as reasonable men, to regard the evidence, and say if you have the slightest reason to believe that he knew anything of the presence of Bibles or Testaments in the place? One person said the fire was lighted before, and another after, he went away; but this matters very little. The question is, whether, having directed immoral books only to be burnt, Father Petcherine knew that there were Bibles or Testaments among those which were, in fact, destroyed? The evidence negatives the assumption that he had such knowledge. Let us go on. What happened after he went into the vestry? In about twenty minutes or half an hour he returned to the chapel-yard; and, by the testimony of Duff and the others, it in no way appears that he then saw what books had been brought, or could have observed them, for they had been burning for half an hour before, and he did not even come near the fire. So that the transactions at the chapel do not help the case for the prosecution in the least degree. The same knowledge which Father Petcherine had of the books when he left his lodging, he had when they were consumed. I reiterate

the question, were there Bibles or Testaments burned among those books—and if so, had my client any knowledge of the fact? Is it possible for you to come to such a conclusion? Then, what is the rest of the evidence for the Crown? Take it altogether, and it does not advance the case for the prosecution one jot. If my learned friends had offered tenfold the evidence they have produced, and a thousand bits of the Bible or Testament, the question would still remain, who put that Bible or Testament there? And unless it were satisfactorily proved that this was done by Father Petcherine, or with his knowledge or assent, you could not for an instant think of convicting him. If he authorised, or directed, or was a party to the placing of the Bible in the fire, he would be open to the imputation of the Crown; but that is just the turning point of the case, on which, I aver, he will be entitled to your acquittal. There is no ground for believing, that he knew of the presence of Bible or Testament amongst the books either in his lodging or in the chapel-yard before they were burnt, or whilst they were burning; and if he did not, you cannot find him guilty. Take all the evidence together, and it amounts merely to this, that a single Bible and a single Testament were seen in the barrows in the chapel-yard. There is no ground for belief that there were any more. And, I may observe, again, in passing, that if Father Petcherine designed to burn the Bible, and so bring Christianity into contempt, or Protestantism in any of its forms, is it not strange that he should have chosen to carry out his purpose, in a spot retired from the public view, and by the destruction of only one or two copies of the Authorised Version? Why, if he had such a purpose, would he not have gathered together a multitude of copies? They are common enough in Kingstown. The proselytising system has no more favourite arena for its action;

nowhere does Biblical propagandism flourish more; and, if Father Petcherine really contemplated open and deliberate insult to the Protestant Bible, he could have had fifty copies as easily as two, and made that insult marked and unmistakable. Does not this fair suggestion sustain my case, and justify me in pressing you, as honest men, to say that you have no reason for imputing to him the design of contemptuously destroying the sacred Scriptures, which is the very foundation of the charge? Witness after witness has been produced to prove that the one Bible and the one Testament were seen. Come first the Messrs. Lawson, and their evidence, at the most, is, that on the top of the several barrows there lay the Bible and the Testament—on the top of one barrow a Bible, and on the top of another a Testament. That is a circumstance worthy of grave consideration. They were on the top of the barrows—not hidden or mixed up with the other books, but on the top—precisely in the place where a person would put them if he wished that they should attract attention. The second Mr. Lawson was as unsatisfactory a witness as I ever saw. You heard his evidence, and observed how difficult it was to get an answer from him, whenever he thought it might possibly be employed for the benefit of the man whom he came to convict. You remember the remarkable reason he gave when he was asked how he could tell that it was the New Testament to which he swore so roundly? 'Oh,' he replied, 'it was newly bound.' That was his notion of the New Testament as distinguished from the Old Testament. He stated that on the evening of the day in question he met Hutchins. Some strange sympathy between them induced their coming to that particular place, on that particular occasion, to make a particular inquiry, and do you believe Lawson's statement that they did not talk about the books when they met? Mr. Charles Lawson

goes next day to look for evidence; and those who seek sometimes can find, for they know where the thing they look for has been left. Then you have a number of people brought to prove that bits of a Bible and bits of a Testament were found in the neighbourhood of the fire, on the day of its occurrence and the day after, and some of those bits were produced for your inspection, after passing from hand to hand amongst the curious in Kingstown, and making a due impression on the fancy and the feeling of those to whom they were exhibited. I presume that they have been paraded here, for the purpose of leading you to suppose that a multitude of Bibles were consumed; but they prove no such thing, for it is a remarkable and somewhat significant circumstance—my attention has been called to it by my learned colleagues, who are men of clear vision and astute minds—that the various pieces completely correspond in type, in paper, in colour and appearance, and may, undoubtedly, have constituted a portion of one and the same copy of the Scriptures. Therefore, you will not take them as representing more than a single copy, however they may be multiplied; but, if the fact were otherwise, and if each individual bit was part of a distinct and separate copy, which it plainly was not, the case for the prosecution would remain as weak and powerless as I have proved it to be, failing sufficient evidence to connect the traverser, by knowledge, or authority, or wilful act, with the destruction of any Bible. On the testimony of the witnesses—Darking and Hutchins, and the Lawsons, and Mr. Wallace and Mrs. Whittle—it is, in my view of the matter, wholly unnecessary that I should trouble you with many observations. Take everything they say to be entirely true, and still the traverser's defence remains unshaken. They prove no fact which establishes, in any way, his complicity in the offence of

which he is accused. They bring home to him no conscious participation in the burning of the Scriptures. They do not relieve the case from the obscurity which rests upon it, or furnish ground for the assurance that he is a guilty man.

I will not say that there was management or collusion in the matter. I will not say that there was ingenious combination to get up a charge; but you will, probably, ask yourselves—how it came to pass, that all these people happened to gather about the chapel and its precincts on this particular morning? They were not in the habit of attending there; they had no business there; they were not summoned there; they manifestly, one and all, were no friends to the religion or attendants upon the worship to which the place is consecrated; they were moved by the same spirit and urged by the same feeling to undertake the discovery of the same facts; and they have come to the same conclusion, with a happy unanimity. They are a pleasant family party, communing agreeably with each other about the wickedness of the priests, and all their testimony hangs together well. But, I repeat, whatever may have been their motives or their aims, they do not advance the case against Father Petcherine. Darking and Halpin, the constable, corroborate the evidence of Duff, as to the presence of a crowd in the open yard, before the arrival of the traverser—the free passage of persons of various opinions, back and forward, through it, and the possibility that any one of those persons might, at his good pleasure, have cast the Bible and Testament upon the piles of books; but not one of the Protestant witnesses has explained the reason why, being Protestants, and reverencing the version of their Church, they allowed it to be consumed without an attempt at its preservation, or an effectual remonstrance against the destruction of it. No

one of them called the attention of Father Petcherine or any of the clergy in the chapel to the presence of the Bible in the yard; and why they did not you are left to guess, and you may deem the matter worthy of some reflection.

The only other witness to whose testimony I shall advert, the Rev. Mr. Wallace, is one of a remarkable character, and his conduct in this case has been of a very peculiar kind. He is a minister of religion—I know not, and I care not, of what special persuasion—and he should have learnt to do by others as he would be done by. He should have known, as a subject of the realm, enjoying the protection of a free constitution and equal laws, that it is a monstrous thing to interfere with the administration of justice, and impute gross criminality to untried men; and if even he was ignorant of this, he might at least have understood the impropriety of prostituting the pulpit, from which no utterance should go but that of truth and love, to the evil uses of factious virulence and envenomed slander. Yet he did assail those who were untried with his pen and from his pulpit. He wrote three letters in a widely circulated journal, and he had not the manliness to sign them with his name. He did not tell his story like a man, and stand by it like a man. He used a fictitious signature—not one, but two and three. He multiplied his identity to give force to his statements, and, under his triple mask, palmed them upon the world as attested by three separate and independent witnesses. Was this fair or honest? But he did more. He went into his pulpit and he preached a sermon, and he published that sermon, and its title is—'A Voice from the Fire. A Sermon, occasioned by the Public Burning of the Bible at Kingstown, by the Redemptorist Fathers, on the 5th of November.' He attended at the preliminary inquiry; he heard my client, by his counsel, solemnly protest his innocence; he knew that a jury must,

in a very few days, pronounce upon the case, and he continued to permit its circulation in hundreds and in thousands, putting, I suppose, the profits in his pocket. Yet all these things he did, intending to work no mischief to the accused. Generous and just man! He would not, for the world, have prejudged the pending cause, and he ventures to swear he did not. How could he sit in that chair, and look you in the face, and tell you that he published his letters, and preached and circulated his sermon, and yet that he had not done a wrong to my client or anything to prejudice his case? Address a large congregation—inflame their passions as fiercely as you can—pronounce fiction to be fact, and romance reality—tell those who may be jurors, or have friends on the jury, that the man to be tried is a guilty man—and still you may declare, as a Christian and a gentleman, that you do not prejudge or injure him! And if all this be not sufficient to secure conviction, publish your sermon and circulate hundreds and thousands of copies, condemning the body of which the accused is one, and still you can confidently say you have done him no evil. Gentlemen, I do not like to assail any man, and least of all a clergyman of any Church, but how am I to deal with the evidence of this witness? The Rev. Mr. Wallace has sworn to you, as positively as he could, that he came to the chapel-yard after ten o'clock on the morning in question, and that, standing outside the gate, about forty yards from the place where the fire had been lighted, he saw little boys kicking into it what appeared to him to be small Bibles. It is quite impossible my client can be affected by such evidence, for no one can rely on it. But I ask you to consider it in relation to the rest of the case, and to come to this conclusion, even should you give Mr. Wallace credit for an intention to speak truly, that he has not, in fact, told the truth, in a case in which his passion and prejudice have been so

excited as to lead him into error. If he be correct in swearing that there were many Bibles, where were they, I ask you, when Darking and the policeman, and the Lawsons and Mrs. Whittle were in the yard? If, instead of one Bible and Testament, there were a heap of them, do you think they would have escaped the attention of the astute and ingenious Lawson? Do you believe that the policeman, whose habits and duties accustom him to accurate observation, would not have seen them? No sensible man, who considers fairly the facts of the case, can hesitate to say that Mr. Wallace's evidence contradicts all the other evidence for the Crown. He fixed himself in his information, and again in his testimony to-day, to a particular hour, after ten o'clock, and at that time he says that there were books unconsumed, and that the boys were kicking Bibles into the fire wholesale. The policeman swears that at nine o'clock all the books were burnt, that the remains were smouldering in the fire, and that nothing remained but a few scattered leaves. I entreat you to note the evidence of Mr. Wallace, not merely because I thus disprove it by the other evidence, but because its nature and character colour the entire case, and may fairly lead you to believe that there is contrivance or collusion in it or management or fraud; or that men have been so animated by sectarian bitterness that they have induced themselves to believe that which is manifestly and confessedly untrue.

Such is the evidence against the traverser. It fails of its object. It does not establish guilt. It makes no case on which with any show of justice a conviction can be sought from an informed and impartial jury. It makes no case, which is not consistent with the innocence of the accused. It exhibits a state of facts on which, if jealous prejudice, prompt to take offence and eager for accusation, had not been brought to operate, no charge of any kind

would have been founded. It details a series of proceedings entirely blameless in themselves, having no purpose of insult to the religious convictions of any human being, and capable of misconstruction only in a country tortured by miserable feuds, which cloud men's judgments and pervert their feelings. My client needs no justification. I claim your verdict on the failure of the Crown. But the Attorney-General, whose conduct of this case has been distinguished by fairness and moderation, has told you that, if Father Petcherine merely directed the bringing in of immoral books you would be bound to hold him innocent. The observation was just and candid, for it is plain that he cannot, in any fairness, be made responsible for that which he did not purpose, and that of his purpose the best evidence must be found in his own conduct and declarations, when he had no apprehension of any trial and no imaginable motive to deceive. I take the issue tendered by the Attorney-General; I adopt the test he has proposed; and I shall prove to you that the condition of facts which he suggested as possible to exist, did exist really, and that Father Petcherine instructed the people to bring to him immoral books, and nothing else. I shall prove that he never, directly or indirectly, in any of his sermons at Kingstown, even referred to the Protestant version of the Scriptures. I shall prove so clearly, that no controversy will be possible upon the point, that neither by insinuation, nor suggestion, nor counsel, nor command, did he seek the delivering up of any Bible, or of any book, save an immoral book. Other evidence, also, I am prepared to offer, which I shall not detail by anticipation; but, if I make satisfactorily the single proof to which I am invited by the Attorney-General, surely there is an end of the case. Even without it I hold myself clearly entitled to your verdict. With it, I am warranted in saying that the prosecution fails completely, and ought not to be pressed. It goes to

demonstrate the intention of the traverser, and, if that intention was innocent, he cannot be guilty. Only the Omniscient God, who rules over all, can judge of the motives and feelings of the human soul, with full knowledge and absolute certainty. Man deals with man according to his words and acts, which are the interpreters of his hidden spirit. And if I satisfy you, beyond all doubt, that the words and acts of my client were not merely consistent with his freedom from the entertainment of such a purpose as the indictment charges, but were wholly irreconcilable with such a purpose, I must have your verdict. Other proofs I repeat, I am prepared to offer, but on this only you must say—'Not Guilty.' And on this I mainly desire that your acquittal may be grounded, for so it will be more valuable than any you might pronounce, upon a technicality of law or a failure of evidence. Such an acquittal only has Father Petcherine, from the first, demanded, and he has lost no opportunity of hastening to obtain it. When he was dragged from a distant county before the magistrates at Kingstown, he met his accusers at once with a calm defiance. He might have embarrassed them to-day by claiming a jury equally composed of foreigners and subjects of the Queen; he waived his right, and accepted at all hazards a jury of Irishmen. He might, in the judgment of his legal advisers, have properly demurred to many counts of the indictment; he made no objection, and adopted the charge as the prosecutor chose to shape it. He might have compelled the postponement of his trial; he was here to abide it, at the earliest moment. In the fearlessness of conscious innocence he has pressed for a moral vindication, and I claim that vindication at your hands as a matter of mere right and justice. I claim it confidently, but with deep anxiety. I am anxious for my client's sake. I am anxious also, because I believe that, in the issue of this inquiry,

interests are involved in comparison with which his personal interest is of little moment. He cares not for himself. He dreads no condemnation, whilst he is free from fault. A life of self-denial has made him fearless of temporal discomforts, and a prison cell would be to him no place of terror. But I feel that, by your conduct and his fortune in this case, religion and society may be gravely affected. I feel that a conviction, if such a result were possible, would confirm prejudice, and inflame faction, and exasperate the animosities which are our shame and curse. I know that an acquittal, manfully claimed and honestly conceded, upon no paltry quibble or device of law, but on the absolute merits of the case, may do incalculable public service. It will soothe passion, and temper extravagance, and correct error, and awaken thought, and give the people confidence in the administration of justice, and teach them to cultivate worthier relations with each other, in the spirit of mutual forbearance, and kindliness, and Christian love.

The whole matter is before you. You have a heavy responsibility and a great duty to perform. If I have succeeded in subduing prejudice and removing prepossession and inducing you to look at the case in its simplicity and truth, the result I feel to be absolutely certain. I ask you merely to apply to it the common principles of criminal justice, which protect the meanest man charged with the basest felony. I ask you confidently to say, that no charge has been sustained against my client. I ask you to declare, that the proof of the prosecutor has failed in connecting him with the fact which you must find, and the intention which must be demonstrated, before a hair of his head can be brought into peril. Be faithful in the discharge of your high function. Act without fear and without favour. Vindicate the law and establish the immunity of innocence ;

and though faction may rage, though sectarian fury raven for its prey, and slander spit its poison upon my client, do equal justice between the Crown and the accused. Make this day memorable in our country's annals by proving that, although he is a stranger, arraigned before men of another blood and race—although he is a Catholic priest tried by a mixed jury of Catholics and Protestants—he has not erred in committing his liberty and his honour to the protection of twelve Irish gentlemen.

On the second day of the trial the counsel for the defence were proceeding to offer evidence as to the instructions given by Father Petcherine with reference to the books, for the purpose of showing the intentions of the traverser, when the Attorney-General objected, and the Court ruled that the evidence was not admissible.

On hearing this decision Mr. O'Hagan made the following statement:—

My lords, I have consulted with my colleagues, and we have come to a decision as to our course. You will permit me to repeat that what has occurred this morning has taken me by surprise. You will permit me to say, that it appears to me, and to those associated with me, fair and just that we should give the evidence I promised yesterday to the jury. I sought an acquittal on no mere quibble or technical rule of law, and I said that to my client that acquittal would be valueless if it did not amount to a moral vindication. I came here, on behalf of a Catholic priest, to prove before the world that, morally and substantially, he had no part in the offence with which he is charged. I was prepared to show that his antecedent acts, declarations, and counsels conclusively disprove the allega-

tions of this indictment. I still offer evidence which, with all respect, I am still disposed to maintain, is legal evidence, and goes to the very gist and essence of the case. Without that evidence the moral vindication which I have laboured to achieve cannot be achieved unless it has been achieved already. You have rejected it; and as I believe the case made by the Crown is no case at all, as I believe it fails absolutely, and is broken to pieces—my lords, I have nothing more to say than this—let the Crown take its course—let the Court take its course—we offer no evidence, and abide the decision of the jury.

[Baron Green charged the jury, who, after having deliberated for about an hour, returned a verdict of 'Not Guilty.']

ARGUMENT ON BEHALF OF WILLIAM O'MALLEY, BEFORE LORD CHANCELLOR NAPIER, IN THE COURT OF CHANCERY, ON NOVEMBER 16, 1858, *IN THE MATTER OF THE O'MALLEYS MINORS.*

INTRODUCTORY NOTE.

There were eight children of a marriage between a Protestant woman and a Roman Catholic police constable, named John O'Malley. All of these, except the youngest, were baptised by a Roman Catholic priest, but, through their father's negligence, they were permitted, when of sufficient age, to assist with their mother at Protestant worship, and to receive instruction in Protestant schools.

In March 1857 John O'Malley died. He was attended on his deathbed by a Roman Catholic priest—the Rev. Eugene Coyne—who subsequently stated in an affidavit that he had administered to him the last rites of the Catholic Church, and that upon that occasion, O'Malley, in the presence of his wife and of two policemen, had directed that his children should be brought up in the Roman Catholic religion.

On the other hand, it was alleged by one Mary Byrne that she had entered the house after the priest and the policemen had gone, and that she then heard O'Malley bid his wife to bring up the children as Protestants. The Vicar of Tuam and Mrs. Jane Robinson—the sister of Mrs. O'Malley—asserted that Mrs. O'Malley herself had declared to them that her husband had expressed this as his final wish.

In June 1858 Mrs. O'Malley became an inmate of the Tuam workhouse, and there registered the children as Protestants. Shortly after entering the workhouse she died.

On August 11 Mrs. Robinson applied to have the children

handed over to her, stating that she had made provision for their support. It fully appeared that the funds to be applied to the maintenance of the minors were to be furnished by persons not related to them, and whose sole interest in them arose from a desire that they should be educated as Protestants. The consideration of Mrs. Robinson's application was adjourned until August 18, when the poor-law guardians ordered the children to be delivered to their paternal uncle, William O'Malley, a Roman Catholic, who expressed his intention of bringing them up in his own faith, and undertook to provide for them.

In the month of September following a petition was presented to the Court of Chancery by Jane Robinson praying that the children—the eldest of whom was now aged twelve and the youngest not yet two—might be made wards of the Court, and that she should be appointed their guardian, and an order was made by the Lord Chancellor in accordance with the prayer of the petition. On November 13 the case again came before the Court upon two petitions—the first, presented by William O'Malley, prayed that the order of the Lord Chancellor of September 23 might be rescinded or varied; and the second, by Jane Robinson, prayed that the minors, who were still in their uncle's custody, should be delivered to her, and asked for a reference to the master to inquire and report respecting their maintenance and education.

There were voluminous affidavits filed in support of both petitions.

Mr. David Lynch, Mr. Thomas O'Hagan, and Mr. Michael Morris, for William O'Malley, contended that the evidence showed the wish of the father to have been that the children should be brought up as Roman Catholics.

Mr. W. Brereton, Mr. Lawson, and Mr. Norwood, for Jane Robinson, relied on the father's permission to have the children educated as Protestants, which, they maintained, was proved by the evidence.

The Right Honourable Joseph Napier was Lord Chancellor. The following is Mr. O'Hagan's argument.

ARGUMENT.

My Lord,—I answer at once the taunt which was uttered by my friend Mr. Lawson at the close of his argument. He said that William O'Malley was to be dealt with as a man in contempt of this High Court, and therefore entitled to no favour at its hands. He could scarcely have considered the meaning of his words, or he would not have ventured so to apply them. My client is in no contempt. I am not here on his behalf to deprecate the disfavour of your lordship. I am here to claim for him audience as patient and consideration as kindly as can be granted to his antagonists. He complains of a wrong done to him in his fiduciary capacity, as the guardian of the orphans of his dead brother; he complains of a more grievous wrong to those orphans from your lordship's order, obtained, as he avers, by misrepresentation and deception, by suppression of truth and suggestion of falsehood, pronounced behind his back—without notice to him or them—without opportunity of remonstrance or reply. At the earliest moment he comes respectfully to protest against that order as improvident, illegal, and unjust; and discloses to your lordship the real facts of the case to ground the reversal of it, which, if they had been honestly stated by Jane Robinson, would, as we conceive, have rendered it impossible for the Court ever to have made it. Therefore, William O'Malley is not in contempt, or in any way disentitled to the attention which a suitor may fairly claim.

The case has been argued at great length on both sides, but not at too great length on either, regard being had to its importance to the parties, and the far graver importance of the principles involved in it to the country. The ample discussion and elaborate criticism which have been applied to the affidavits relieve me of the necessity of a wearisome repetition of their details, and I shall address myself to the leading facts and considerations which appear material to a right appreciation of the merits of the matter. To me it seems a case of the first impression, and the order which I ask your lordship to reverse, as procured by fraud and misrepresentation, I believe to be without precedent, and to involve in its maintenance a denial of established principle and a disregard of the settled practice of the Court. How stand the parties? The paternal uncle, a Catholic, has possession of the orphans. Their maternal aunt seeks to deprive him of them and hand them over to Protestant guardianship; and it is avowed that the change is demanded, purely and simply, with the purpose of securing their education in the Protestant faith. On behalf of William O'Malley we seek no intervention of the Court —Jane Robinson calls on it to interfere in order that the children may be Protestants.

Their father was an humble man in the service of her Majesty. It is now conceded, because denial of the truth is no longer possible, that he was born in the Catholic Church, and that he lived and died a Catholic. The attempts which have been made to throw doubt on this cardinal fact have been abandoned, and the admission of it is only qualified by the suggestion that he did not practically fulfil the obligations cast upon him by his religious profession. But it is also conceded that his children, one after another, were baptised as Catholics—were so baptised at his own instance, and probably against the will of his

Protestant wife, and that these baptisms continued through a long series of years—demonstrating, in the strongest way, the man's enduring attachment to the religion of his fathers. So it was, whilst he had intellect to judge, or will to act, or tongue to speak; and, only when he was *in extremis*, his last child was baptised a Protestant. There is no particle of proof that he knew it was so baptised; and that he did not, the conduct of his former life and his behaviour in the final hour combine to make probable; for it is, further, beyond all doubt, that when he lay upon his deathbed he received at the hands of a priest the impressive and awful rites with which the Catholic Church fortifies her children on their passage to eternity; and that, after he had departed, the *De Profundis* was read over his coffin, and, as a Catholic, he was committed to the grave. Thus, his Catholicism is conclusively established, and it avails nothing to say that, like too many others, he was not strict and faithful in the discharge of his religious duties – that, pressed by poverty and anxious for the good-will of people of affluence and power, he permitted some of his Catholic children to attend occasionally at Protestant worship and at Protestant schools. This Court is not to judge whether he did his duty as a father and a Christian, or failed to do it. But one material question for your lordship is, whether he was really a Catholic or a Protestant? And, whatever may have been his acts during his life—however he may have forgotten his obligations to his children and his allegiance to his God—he never ceased to profess and to maintain the faith of a Catholic. And when the day which tries men's souls arrived—when the influence of worldly motives and sordid interests had lost its power—when for him time was past and eternity was present—his conscience was awakened; he remembered the duty he had forgotten in the hour of his strength, and of his own motion, without

interference or importunity of any kind, he declared that he wished his children to be educated in the religion in which he died.

What, then, is the Court required to do? To set at naught the will of the father of these orphans, and compel their nurture in a faith which he repudiated in life and death. If the order which your lordship has pronounced should be sustained, that would be the strange and startling result. But, I submit that it must be rescinded, and first, because it was pronounced *ex parte*—without notice to the paternal uncle having actual custody of the children—without notice to any human being—and without a reference for the selection of the guardian (*Johnson* v. *Beattie*, 10 Cl. & Fin. 110). By that order Jane Robinson was summarily appointed, in the absence of discussion or inquiry, or the smallest opportunity of objection. I do not deny that, under certain circumstances, and after full investigation, on proper notice, this Court, having a wise regard to the interests of humble people, may make an order, without the expense of a reference, for the appointment of a guardian. But in this case there has been no investigation; there has been no notice; all has been done *ex parte*; and an order, so pronounced, ought not to stand. It is without precedent, and, so far as I know, against all authority in this country.

But further, the order should be rescinded, because it has been pronounced upon a misrepresentation and misconception of the facts of the case. Your lordship has been induced to make it, I repeat, by suggestion of falsehood and suppression of truth; and, on principles with which we are all familiar, this consideration alone should suffice for its reversal. The Court is not to blame, so much as the party putting it in motion; and she should not be permitted to take advantage of her own wrong. In at

least three matters of the highest importance, the petitioner has manifestly and deliberately misled your lordship. First, she represented herself as the real promovent in the case, whereas she is a puppet moved by unseen hands. Next she pretended that she had the means of maintaining and educating the orphans, and that she meant, personally, to discharge the duties of their guardianship; although it is now perfectly plain that she has no property, and that with that guardianship she will meddle only to commit it to others who are not before the Court. And, finally, she stated, in direct contravention of the fact, that the Poor Law Commissioners had already determined the matter in her favour. It is further remarkable that in her statements, from the beginning of the petition to the end, there is no distinct disclosure that John O'Malley was a Catholic. After the discussion of the case, and with its present knowledge, the Court might gather, perhaps, by inference from the statements that he was so; but there is no clear and unequivocal averment of that essential fact, and the framer of the pleading ingeniously left to the petitioner the opportunity, which she has used, of endeavouring, though vainly, to call it into question. Now, my lord, is it possible that an order based on a petition such as this can be upheld? Every day, courts of equity deny relief, if there be the least wilful concealment or perversion of the truth by persons seeking their assistance; and here, from the opening to the close of it, the petition is deceptive in every line. The case which it presents is in flat contradiction to the case made at the Bar: and you cannot act upon the one without condemnation of the other. It is avowed that Jane Robinson has not the means of maintaining or educating the children—that she does not intend to maintain them—and that strangers to their father in name and faith propose to supply those means and undertake

that responsibility. It is avowed that Jane Robinson is a mere phantom in the case. Her petition is a delusion and a sham—and the Court has really to deal with the Hon. Mary Plunket, masquerading in the rags of the seamstress of Drumkeeran. If that state of facts had been presented to your lordship, could you have made this order? Could you have clothed with the rights and responsibilities of a guardian of little children a person avowing that she would not accept the rights or bear the responsibilities? Surely, if the Court communicates the powers which belong to it as representing the Sovereign—the *parens patriæ*—it must see that those powers shall be vested in someone, within its jurisdiction and under its control, to the end that they be used, wisely and with due guidance, for the benefit of the helpless creatures for whose sake they are bestowed. The doctrine propounded at the Bar, that the Lord Chancellor should recognise the benevolent designs of Protestant philanthropy, bent to propagate Protestant opinions and to keep orphans in the Protestant faith, is new and startling. The like of it has never before been heard in a court of justice.

The LORD CHANCELLOR: I should like, Mr. O'Hagan, to hear your view as to a case in which the relatives of a child might be unable to support it, but, wishing to keep it properly in a particular faith, got means for its support from a third party, and then applied to the Court for the guardianship. Is there anything to disentitle such a party to the intervention of the Court?

Mr. O'HAGAN: I think it is plain that in such a case the party would be disentitled to your lordship's intervention, if it appeared that he was not really to be the guardian, but that the child was to be consigned to someone not in privity with the Court, and beyond the range of its immediate superintendence. I believe that no case can

be found in which such a person has received aid from the jurisdiction of a court of equity, on the false pretence that it was exerted to assist a nominal petitioner. Test the matter thus: If the Hon. Mary Plunket had presented a petition in her own name, to have these infants committed to her care, could your lordship have listened to her for one moment? Most plainly not. She is entitled to your interference by no legal or natural right, and you must have dismissed her petition. Yet you have been required to do something still more objectionable; for you would, in the case I have supposed, have been dealing with a real person, capable of regulated action and answerable for her conduct; but, as the matter stands, if the order be not rescinded, you will give the guardianship to one who declares that she cannot and will not undertake it, and demands it for the purpose of transferring it to others who owe no obligation to the Court, and may neglect or fulfil its duties, just as they please. I cannot help believing that such an exercise of your lordship's authority would be *pessimi exempli*—the creation of a precedent of a very novel and dangerous kind.

The misstatement as to the Poor Law Commissioners is clear as it is material. The belief that they had directed the children to be given to the petitioner must have affected your judgment, and it was founded on a simple falsehood; for, though the letter of the Commissioners of August 24 declared that the guardians should not determine the religious question between the conflicting parties; yet, twenty days after it was written, Jane Robinson distinctly falsified its import, and pretended that they had decided in her favour. In connection with this matter, I may set right a statement with reference to the Rev. Mr. Coyne, which may more or less have weighed upon your lordship's mind. My friends have argued that he should have sought

to alter the registry of the children promptly, if he really heard their father direct that they should be brought up as Roman Catholics. The answer is, that Mr. Coyne did apply to have that alteration made, and is prepared to prove that he so applied; but he was told that the registry was legally correct and could not be altered. And it was so; for, according to the original poor law (1 & 2 Vict. c. 56, sec. 69), the guardians are bound to educate the child in the religion of the surviving parent, and, beyond doubt, Ellen O'Malley was a Protestant. Therefore, the Rev. Mr. Coyne had no power, during her life, to procure an alteration of the registry; but the will of the father, which was of no effect for that purpose, became paramount after the mother's death, as guiding the discretion of a court of equity.

I need not answer the vituperative declamation of which the Tuam guardians have been the victims. They are absent; they are not represented here. Whether they were right or whether they were wrong is not at all a matter for the consideration of your lordship; and their decision, one way or the other, cannot avail to influence yours; but it is only fair to say for them that they decided, not at the instance of one party only, but on the appeal of both the parties, and after the cases of both had been fully stated. No one then doubted the jurisdiction which is now denied, and the guardians simply pronounced their decision as to the matter submitted to them, according to the best of their judgment, and upon the very facts and evidence on which I now confidently claim from your lordship a substantial ratification of the opinion on which they acted. They have been most unwarrantably and unjustifiably assailed.

Submitting, then, that this order should be reversed, because it has been obtained by misrepresentation and sup-

pression, I submit further, respectfully, that your lordship had no jurisdiction whatever to make such an order. I have looked through all the authorities which bear upon this important branch of the functions of the Court, and I do not find a single case in which it has ever been exercised in the absence of all property, belonging to infants or supplied to them by others. The Court of Queen's Bench acts by *Habeas Corpus* in assertion of natural rights, without regard to pecuniary considerations. The Court of Chancery, though its jurisdiction is theoretically universal, in practice has that jurisdiction limited, for it must see that there are means to maintain the children whom it takes under its care. The life of a beggar, the soul of a beggar, are as precious in the eyes of the Almighty as the life and the soul of a prince; but the Sovereign, whom the Lord Chancellor represents, cannot undertake the guardianship of all the paupers of the realm; and, accordingly, it seems perfectly settled, by a concurrence of all the cases in England, and by the uniform practice of the Court in Ireland, that, unless there be some money provided for the maintenance of infants, it will not meddle with them. Lord Cottenham says that the lodgment of 100*l*. for the benefit of a child has been held to warrant the intervention of the Chancellor; but without this, at least, it never has been heretofore applied. In the case before the Court the children are paupers; the petitioner is a pauper; and not one farthing has been lodged. At least 800*l*. should have been supplied, to warrant the exercise of your lordship's authority on behalf of the eight infants; but there has not been a lodgment of eight hundred pence. If those who promote the petition really desired to exercise their benevolence they should have secured the money in the first instance, and then the right to the guardianship might properly have been discussed. But, as the matter stands, there is no

lodgment to attract the exercise of the Court's jurisdiction. The offer to endow is made by a person avowedly without any means in the world, and is actually contingent on the decision to be pronounced by your lordship; and I submit confidently that, as, under such circumstances, no judge of a court of equity has ever heretofore appointed a guardian, such an appointment cannot now be made, without a total disregard of practice and principle. But upon the evidence—suppose jurisdiction assumed and exercised—is this petitioner entitled to the custody of these infants? It is proved, beyond controversy, that when Ellen O'Malley brought her children to beg for shelter under her sister's roof, that shelter was denied her, and she was driven to the workhouse that she might escape starvation. It is proved that her anger at the treatment she received was deep and strong; that she complained bitterly of the conduct of her relative, in the extremity of her destitution; and she was anxious to seek the assistance of William O'Malley for herself and her little ones, when she grew sick and died. One of her very latest acts is proved by Mary Browne to have been the preparation to communicate with her husband's brother, and to implore his protection; and yet he is abused because he has interfered to give that aid to her children which in her lifetime Jane Robinson—now the tender and anxious guardian—had denied. The woman left her family to be sustained by the public bounty; and then arose the controversy about their faith. In the first instance, the true claim was put forward before the guardians by the real claimant, when the Rev. Mr. Seymour, by his letter of the 11th of August, demanded the children for the Hon. Miss Plunket, without any reference to their aunt. This was a plain and intelligible requisition; and it was made without a vain show of respect for any rights of relationship. Miss Plunket did not

then pretend to speak in the name of Jane Robinson; Jane Robinson did not simulate a false anxiety to receive her nephews and nieces, whom she had turned from her door whilst their mother lived. The demand was boldly made on behalf of Miss Plunket; and when the guardians were found unwilling to concede it, as they could not have done with any consideration for their own duty and the natural claims of kindred and affection, emissaries were sent forth to scour the bogs of Leitrim, and bring up the Protestant aunt to make a feint of interest in the orphans, that she might obtain their custody and give it to Miss Plunket. The question was discussed before the guardians, and all parties invoked their aid and submitted to their judgment. They saw that the claim of Jane Robinson had no reality; they saw that she was only a stalking-horse thrust forward for a purpose; and they declined to be tricked by the transparent device. They said, and they said rightly, according to the report of the meeting relied on by the petitioner, that they would not be justified in handing over the orphans to a woman who manifestly could not maintain them, and proclaimed, even then, that she had no intention of maintaining them. Having the necessity of a choice thus cast upon them by the importunities of the litigants, the Board preferred the paternal uncle to the utter stranger—the brother, professing the father's faith, and willing to obey his dying will, to the Protestant lady, whose declared motive for meddling with the orphans was, that they might be brought up as Protestants in flat contempt of that father's wish and prayer.

But, as to this, there was then and now a conflict of argument and evidence, and the great question was,—what was John O'Malley's real will as to the religion in which his children should be educated? A strange question, surely! A question involving, in the very statement of it, the suggestion of a criminal indifference to their eternal interests,

which should not be lightly imputed to any parent! It is a question which sounds especially strange in Ireland, where, whatever be our faults and our shortcomings, there is, thank God, a prevailing earnestness of religious faith, which guards and hallows domestic affection; and here, at least, to say that a man is a Catholic, is to say, without the necessity of proof, that he desires his children also to be Catholics. And the law, in the absence of all evidence of express direction, assumes that it must be so. The settled principle is this, established by all the authorities, that, if a father has not left any instruction as to the religion in which his infant children are to be educated, the Court will presume that he designed them to be educated in his own. (*In re North*, 11 *Jur.*) The same doctrine is declared in *Whitty* v. *Marshall*, 1 Y. and C., p. 8; in *Talbot* v. *Shrewsbury*, 4 M. and C., 672; in *Stourton* v. *Stourton*, 3 *Jur.*, N.S., 527, and many other cases. It results, that if John O'Malley was a Catholic, even though on his deathbed he omitted to direct the mode in which the religious education of his children should be conducted—even though he did not utter a word or a wish upon the subject, this Court should recognise his religion as sufficient, in itself, to imply a purpose determining the proper character of theirs. This has been felt so strongly on the other side that a vain struggle has been made to deny the Catholicism of the father, in order to avoid its legal and natural consequences. A Mr. Ronaldson has been got to state his 'inferences' as to the creed of John O'Malley; and the Rev. Mr. Fowler swears that he visited the dying policeman during his last illness, and that he read to him portions of the Scriptures opposed to the distinctive doctrines of the Church of Rome, and spoke to him of faith in our Saviour as the means of our salvation, and that John O'Malley expressed belief in that doctrine and his consequent rejection of the Roman

Catholic religion. Now, it is notable that the Rev. Mr. Fowler's ministrations were never sought by John O'Malley. When he needed spiritual consolation he sent for a Catholic priest. But his wife was a Protestant. So miserably poor were they, that she was confined in the bed of her dying husband, and, as she lay beside him, the Rev. Mr. Fowler came to visit her. To her his attention was right and proper, but he determined to improve the opportunity, and intruded his unsought services on O'Malley. The poor man may have listened to him. He could not help it. He may have listened, patiently and courteously. He may not have answered with rudeness or with insult. He may not have wasted his failing breath in a vain effort at angry controversy. But to infer from all this that he was a Protestant is monstrous in the extreme. The clergyman spoke and departed, and the dying man then summoned the minister of the Catholic Church, reverently received its sacraments, and made his peace with God. I do not know the nature of the Rev. Mr. Fowler's theological opinions, or the character of his theological education. I take him to be a deadly foe to the Church of Rome; but it is impossible to conceive completer ignorance of the teaching of that Church than he has displayed in venturing to assert that belief in salvation by the blood of Christ involves a denial of her distinctive doctrines,—that full reliance on the merits of the Redeemer implies abandonment of the faith of A'Kempis and Fénelon and De Sales!

No wonder that the counsel for Jane Robinson shrank from the assertion of John O'Malley's Protestantism on such grounds as these. No wonder that they frankly and fairly admitted his Catholicism, when it was only open to such impeachment. Making that admission, they took the foundation from their case; for the religion of the father ought, according to all authority, in the absence of other

considerations, to guide the Court in determining the religion of his infant children, and declaring, although he had given no intimation by writing or by speech of his desire,—that theirs should be what his had always been. But, in this case, John O'Malley did give such an intimation,—did give it in the strongest and most emphatic way, —under the most solemn circumstances—with the most awful sanctions. If the Court is satisfied that such an intimation was given, it will respect the wishes of the dead, and enforce the authority of the parent, although he has departed. And is not the proof we have offered persuasive and coercive? If there be a conflict, is not the weight of evidence plainly and unmistakably with us? The affidavit of the Rev. Mr. Coyne should, I submit, decide the question in our favour, even if it stood alone and without a particle of corroboration. I shall read from it a few sentences:—

Saith, that he attended the late John O'Malley, the father of the minors, previous to his death, and administered to him the last rites of the Church.

Saith, that upon that occasion John O'Malley, in the presence of his wife and two policemen, Daniel Coughlin and Patrick Mullaghan, expressed a wish and directed that his children should be brought up in the Roman Catholic religion, the religion professed by him.

Saith, that the said John O'Malley's wife, upon hearing this injunction, said to him: 'John, you were always a kind and affectionate husband; I would wish to carry out your intention; but what means have you left for that?' Whereupon this deponent said that matter should be left in the hands of Providence.

Is this true or is it false? Is Mr. Coyne deceiving or deceived? If he states honestly what actually occurred—*cadit quæstio*—the controversy is at an end. The father's will must prevail—the father's direction must be obeyed.

It is the law, affirming the dictates of reason and approving the impulses of nature. But no one impeaches the Rev. Mr. Coyne ; no one ventures to say that he has perverted the truth. The counsel for the petitioner have deliberately admitted his integrity; and, if your lordship can see no cause to doubt it, I submit that we are entitled to your judgment.

But Mr. Coyne is conclusively corroborated, if he needed corroboration. Two witnesses, Catherine O'Dea and Anne Tiernan, who attended John O'Malley during his last illness, and heard the words addressed to the priest, have sworn that they were spoken. And again, they are not impeached or impeachable. But, further still, two comrades of the dying man were present when those words were uttered. They are vouched by Mr. Coyne in confirmation of his statement. They are alive. They are in Tuam. Every effort has been made to procure their testimony. A rule of the police force has, so far, deprived us of it. Your lordship can command it. If you have any doubt you can require them to make affidavits. Mr. Coyne has implored you to do so. I press his prayer. I appeal to the oaths of these men,—faithworthy witnesses,—in the public service, beyond all influence and free from all imputation. I say they will confirm every statement of Mr. Coyne ; and though they have not spoken, I have a right to use them powerfully in aid of my argument. Thus, my lord, you have, as to the great fact in the case, the direction of the dying father, the evidence of Mr. Coyne—sustained by the evidence of the two nurse-tenders,—sustained, if you need their intervention, by the evidence of the two constables,—five witnesses deposing, and prepared to depose, to that conclusive fact.

On the other side, what have you ? A single witness, Mary Byrne, a woman picked up in the stables of the

Bishop of Tuam,—an underling of an underling of his lordship,—an attendant upon his lordship's coachman. Even she does not attempt to contradict Mr. Coyne. She does not pretend to say that the words attributed by him to John O'Malley were not spoken. But she would induce you to believe that, after Mr. Coyne had gone away, the dying man declared that he desired his children to be brought up by his wife in her own religion. The affidavit is self-condemnatory. Its extreme minuteness of detail and extraordinary precision of phrase do not commend it, I apprehend, as a natural statement of remembered facts. But, passing from this, I ask your lordship, do you believe the story? Do you believe,—assuming the truth of Mr. Coyne's statement,—that O'Malley, without any motive or object in the world, was guilty of duplicity, as base as it was unaccountable, on his bed of death? Do you believe that, having manifested of his own accord a desire to be reconciled with heaven, he went to meet his Creator with a lie on his lips? He had confessed his sins; he had professed his faith; he had taken leave of life and all its vanities and all its weaknesses. It is not easy for one beyond the pale of the Church to estimate the solemnising and overmastering influence which her sacramental ordinances exert upon the soul of a Catholic, especially at the supreme hour when he knows he is passing to his great account; but it needs no experience of the spiritual life of Catholicism to appreciate the difficulty of believing that, in that last dread hour, a man will be found to play fast and loose with conscience, and brave the terrors of eternity, 'paltering in a double sense' with the highest duty and the dearest interest which can engage his thoughts. So far has the deathbed been found, by the experience of ages, to operate in chastening the spirit and compelling the utterance of the truth, that our law makes a dying declaration equivalent to an

oath, and, in our criminal courts, time after time, capital convictions and the sacrifice of human life have been justified only by such declarations. In my judgment, my lord, the statement of Mary Byrne is intrinsically incredible; but be this as it may, it is but a single statement, collaterally in contradiction of the proof which we have given; and, on the other side, you have the accumulated testimony of many witnesses, all deposing to facts consistent with antecedent probability and the common workings of our life and nature. Is it possible to say that the weight of evidence is not in this matter overwhelmingly with us? And if it be, and if the affidavit of Mr. Coyne be true, am I too bold in saying that we are entitled, strictly, to the reversal of your lordship's order?

I can scarcely conceive in what way this argument can be encountered. I have heard a hint at 'undue influence.' Mr. Coyne's veracity cannot be assailed, and, therefore, it is necessary to insinuate that, by some unfair means, he obtained the direction which undeniably was given. Undue influence! There is not a shred or scintilla of proof of any such thing. Mr. Coyne is required to attend on a man he had never known before. His is no intrusion; his is no trespass in the place of sorrow; his is no uncalled-for and ungrateful service. He goes, according to his duty, He does his duty, and no more; and there is something monstrous in the imputation—the most gratuitous and groundless imputation—that he was guilty of trick or management or coercion in his dealing with his penitent. Some people think it would appear that a priest cannot approach a sick bed without the exertion of 'undue influence'—a phrase to which they would find it difficult to attach a meaning. They are sadly ignorant of Catholic faith and practice. But it is enough for me to say to your lordship, that in this case there is not even the shadow of pretence for

believing that any such influence, of any kind, was exerted upon John O'Malley, or that the declaration which he made was not the spontaneous utterance of the decision of his understanding and the feeling of his heart.

I should add this, on behalf of the Rev. Mr. Coyne, that his conduct throughout these transactions does him high credit. He discharged his sacred functions faithfully, and with the discharge of them he was content. The unhappy mother of these orphan children sought to make commodity of her religion—sought to gain temporal advantages by wavering between her husband's faith and her own; but Mr. Coyne refused to have a part in the dishonourable barter, and his conduct, in that regard, was worthy of a Christian priest and an honourable gentleman. I do believe that interference with the faith of others,—intrusive and meddling interference,—operating through the machinery of worldly motives and by the excitement of sordid hopes,—is an accursed thing. I believe that those who so interfere are deeply guilty. They bring contempt on our divine religion, and rob their victims at once of honour and of faith—of peace here and of hope hereafter. As regards the Catholic poor, whose wretchedness sometimes exposes them to the operation of practices so vile, the chance is not that they shall undergo a real change to Protestantism; but if they are affected further than to become mere hollow hypocrites, the foundations of all belief may be shaken in their souls;—and, if it were possible, which it is not, that such a system should succeed to any large extent, the land might be heathenised and its unhappy people sunk in the desolation of a godless infidelity. The conduct of the Rev. Mr. Coyne distinguishes him, very honourably, from those who aid in working this grievous mischief, and should protect him, in your lordship's judgment, against the insinuations which have been aimed at him without a colour of justification in fact or evidence.

If, then, John O'Malley was a Catholic, his children should be Catholics—Catholics still more should they be, if he expressly declared with his dying breath that they should be educated in the Catholic faith. But no, says the petitioner. The children are Protestants; and it is your lordship's right and duty to keep them so. Protestants! What constitutes a Protestant? Is the baby in arms a Protestant? Are the infants of two years Protestants? Are all the children who have been successively made Catholics by baptism, and who are still incapable of forming a judgment or adopting a religion for themselves, to be arrayed against their father's faith, and presumed to be Protestants in disregard of his dying mandate? The argument seems to me preposterous. It could apply, at the very most, but to two of the orphans, and to them only, if the Court should ascertain that they had really formed religious opinions, which, according to the authorities, ought to be respected, notwithstanding the religious profession and even the direction of their parent. But that is not the case made on the other side. The petitioner claims all the children—she tolerates no distinction. One of the elder boys told William O'Malley that he was only once or twice at Protestant worship; the eldest girl declared that she had never been at that worship at all; and their uncle swears that they are much attached to him, and desire to continue in the Roman Catholic Church. But even if as to these there be possibility of question, there is none as to the infants, who are too young to have formed any judgment of their own, and as to whom all the cases make the religion and the will of their father perfectly decisive. That unfortunate father sadly neglected his most important duty. For human respect and worldly advantage he played with the immortal destinies of his offspring. He was a policeman, and he believed that strict adherence to

his obligations, as a Catholic, would not advance his promotion. He knew that present profit might result from the abandonment of principle, and he succumbed for a time to the temptation,—hoping, plainly, that he might rectify, before his death, the wrong which he permitted, and guard his children from the loss of his own faith. He told Mr. Owens, a respectable merchant of Tuam, who deposes to the fact, that he had to complain of the interference of his wife with the religion of his family, 'that he wished them to be brought up in the Roman Catholic faith, and that he would put an end to that interference; but he feared to make a noise about the matter, as it might be injurious to him as a policeman.' The man's conduct is not to be defended, and the result of it should afford an impressive warning to other parents who may be tempted weakly to err like him. But your lordship has nothing to do with John O'Malley's acts, save for the purpose of ascertaining what was his real belief; and of this there can be no sort of doubt. For, even whilst he allowed, from coward apprehension of temporal mischief, what he believed to be improper interference with his children's education, he continued steadily to adhere to his own religion; and more conclusive evidence of this there cannot be than their successive baptisms, for many years, at the font of the Catholic Church. Each of those baptisms was an emphatic profession of his continuing faith—each of them was a spontaneous pledge that in that faith the infant should be nurtured. There is nothing, therefore, in the argument founded on O'Malley's temporary submission to the evil influences of worldly hope and fear. His convictions were not altered; and, in dealing with his orphans, the Court is bound to treat them with respect. I insist, therefore, my lord, that your order should be rescinded, because it was founded on fraud and misrepresentation—because it was pronounced on an application which

was not *bonâ fide*, and for an applicant who is not before the Court,—because, contrary to all practice, it was made without notice and without reference,—and because, contrary to all principle, it sets at naught the effect of the father's religion and the operation of the father's will, in determining the education of his infant children. I insist respectfully, that the want of all property should restrain the Court from any interference in the case, and that it should not, for the first time, assume a jurisdiction under such novel circumstances. In *Talbot* v. *Earl of Shrewsbury* (4 M. & C. 210), the Chancellor uses these emphatic words: 'Although the father has not the power of regulating after his death the faith in which his child should be brought up, the Court will pay great attention to the expression of his wishes, and he can exercise that power indirectly by appointing a guardian of that faith. When, therefore, a Roman Catholic father appoints a Roman Catholic guardian, there can be no doubt as to the father's intention; and if I am to interfere with the exercise of that guardian's discretion as to the faith in which the child should be educated, I should be doing an act of very great injustice. Nothing can be more dear to a father than regulating the religious education of his child; and if I was to interfere in the manner which is desired, I should adopt a course to induce those dissenting from the Established Church to suppose that the Court would control the education of their children.' These words are wise and weighty, and they are not unworthy of consideration in this Irish Court, where, in its highest judicial place, the law does not permit the Catholic fathers of Ireland to be represented. I ask your lordship to pause before you intervene in the matter, and make a dangerous precedent. I do not ask you to intervene in it. I do not ask you to do anything. I ask you only to hold your hand, and refuse to defeat the wishes—the dearest and

the last—of a father in his dying hour. I implore you, my lord, in the words of a great Vice-Chancellor of England, 'to keep faith with that dead father in his grave.'

[Lord Chancellor Napier made the following order :—'Let the respondent deliver over to the said Jane Robinson the said minors, William O'Malley, Catherine O'Malley, Jane O'Malley, Eleanor O'Malley, Creighton O'Malley, John O'Malley, Robert O'Malley, and Samuel O'Malley; the said Jane Robinson, by her counsel in open court, undertaking to provide for the nurture, clothing, maintenance, and support of the said minors until further order, and to abide such further order as the Court may please to make, and refer it to Edward Litton, the master in this matter, and to inquire and report the ages of the said minors respectively, and to state in what manner it is proposed that they should be maintained and educated, and with whom they should reside; and let the said master inquire and report the nature and amount of any provision made, or to be made, for the nurture, maintenance, clothing, and education of the said minors, and the funds applicable thereto.']

[The order had substantially the effect of directing the child ren to be educated as Protestants.]

A SPEECH DELIVERED FOR THE PROSECUTION AT THE TRIAL OF THOMAS BECKHAM FOR WILFUL MURDER, AT A SPECIAL COMMISSION IN THE CITY OF LIMERICK, ON JUNE 16, 1862.

INTRODUCTORY NOTE.

On the afternoon of May 16, 1862, while Mr. Francis Fitzgerald, the owner of a small property in the county of Limerick, was returning home, accompanied by his wife, from paying a visit to one of his tenants, he was accosted at a place called Kilmallock Hill, a few miles from the town of Bruff, by two men, one of whom drew a pistol from his pocket and, presenting it at him, said, 'You are my man; give me up your money,' while the other stepped quickly behind him.

Without waiting for an answer the first man fired and wounded Mr. Fitzgerald in the neck. The next instant he was again shot in the back, and fell, crying out, 'I am killed by the villains.' The two men jumped over a ditch and disappeared.

Mrs. Fitzgerald ran for assistance, and on her return in a few minutes she found a number of people surrounding her husband. They carried him to his house, where, after having made a deposition, he very soon died.

At four o'clock the next morning a man named Thomas Beckham was arrested at a house eight or nine miles from the place of the murder, and was identified by Mrs. Fitzgerald as the man who first addressed her husband and shot him.

Beckham's previous history had been very bad. He was tried in 1848 for the murder of a farmer at Ballinahinch, and,

though the charge could not be brought home to him, no doubt was entertained of his guilt. In 1852 he was convicted of robbery and sentenced to transportation for seven years. After his return home, at the expiration of his term of punishment, he led an idle, dissipated life.

A companion of Beckham's named James Walshe, who was suspected of being the second of the two men who attacked Mr. Fitzgerald, could not at first be found by the police.

On June 16, 1862, Thomas Beckham was put on his trial for wilful murder at a special commission, held in the city of Limerick, and presided over by Mr. Justice Fitzgerald and Baron Deasy.

The Attorney-General (Mr. O'Hagan) and the Solicitor-General (Mr. Lawson) appeared for the Crown, and the prisoner was defended by Mr. Coffey.

The evidence for the prosecution is fully detailed in Mr. O'Hagan's speech: the defence relied mainly on a discrepancy between the statements of Mr. and Mrs. Fitzgerald as to which of the men fired the first shot.

Mr. O'Hagan opened the case with the following speech.

SPEECH.

It now becomes my duty to state to you the case for the Crown, and I do so with a deep sense of the gravity of the occasion which has brought us together. You have been summoned to discharge one of the highest functions, and to bear one of the most serious responsibilities, which can belong to human beings; and you are assembled at an unusual time and under extraordinary circumstances. Why this burthen is cast upon you, all who hear me fully understand. Many questions may arise in the progress of the trial; but there can be none as to this—that, in your great and prosperous county—in the open daylight—in a populous neighbourhood—on a public highway—a foul and flagitious murder has been committed, with a reckless audacity and a savage cruelty, not often paralleled in the history of crime. That desperate deed filled with horror and disgust all good men of every class and party; and, in its revolting character, its probable origin, and its relations to society, it has been, with others of a like nature, the subject of anxious consideration by the Executive Government. The result of that consideration was, that, for prevention not less than for punishment, it was thought right and fitting to bring into instant activity all the appliances and powers with which the Government is armed by the Constitution and the Law. Exceptional procedure, like exceptional legislation, should be avoided, unless the safety of the community imperatively demands it; but, that condition being fulfilled in the existence of a

manifest necessity, the Legislature must encounter peculiar exigencies by peculiar enactments; and the Government would be unworthy to exist which should shrink, in the day of trouble, from preserving tranquillity and protecting life by a more vigorous promptness than is needed in happier times.

I had fondly hoped that we might never again have seen a Special Commission justified by acts of outrage in Ireland. Only a few months have passed, since I rejoiced to tell distinguished persons who visited our metropolis at the meeting of a great association, that Ireland was happy in an absence of crimes of fraud and violence, which it would not be easy to parallel in any country of the world. It was indisputably true: and we all earnestly trusted that the evil days of the past had gone for ever, and that the blessed change would be enduring. Unhappily, some sad occurrences have lately, to a certain extent, falsified our anticipations; and, in some districts, deeds have been perpetrated, which bring shame upon us as a civilised and Christian people. The districts, so disgraced, are as yet not numerous; the evil deeds are not multiplied as in other times, but some of them have been of such an atrocious nature, and, eminently, that which it is your painful duty to consider, that it behoves all who are charged with the maintenance of the public peace, and all who love their country, desire its progress, and are jealous of its honour, to put forth their utmost strength, that it may be saved from the scandal and the curse which the shedding of human blood must surely bring upon it. With that object, and that only, has this Commission been issued. *Obsta principiis* is a sound maxim: and the effort to check social disorder in its ominous beginnings is worthier and wiser than would be the resolve to await its wide development, and then to visit it with vindictive penalties.

No change has been sought or made in the ordinary

law; but we are here, a little anticipating its customary action, that speedy justice may reach the guilty or liberate the innocent: and that the determination of the Executive to protect the subjects of the Queen may be so manifested, as to give confidence to the community, deter the ill-disposed from further outrage, and preserve the people from the dreadful mischiefs which afflict them all—and, not least, the lowest in station and humblest in circumstances—when licentious violence unsettles the minds of men, destroys the value of property, deranges the free course of honest labour, and strikes at the foundations of social order. So much I have deemed it right to say as to the necessity which originated this Commission, and the objects at which it aims; but I have no purpose to discuss any question or matter which does not directly bear on the single case before you. I am here simply to vindicate the law, or rather, to assist you in the vindication of it, by presenting the facts which I expect to be established in evidence, so as to facilitate your apprehension and appreciation of them.

I ask you to approach the examination of those facts with perfect calmness and complete freedom from all extraneous influences. I ask you to dismiss from your minds and memories all that you may have read, all that you may have heard, as to the charge against the accused, and to be guided in reaching that decision which will seal his fate for life or death, by the evidence, and the evidence alone. To that evidence I shall briefly invite your attention, assured that you will weigh it deliberately in all its parts—warped by no prejudice and stirred by no excitement—bent only on the ascertainment of the truth, and resolved to accomplish justice 'uncaring consequences.' Of its value and effect you are the exclusive judges: you will watch it with care and caution, and utterly disregard any

statements and inferences of mine, save and so far as you may find them conclusively commended to your understanding and your consciences by the testimony of the witnesses I shall produce before you.

The prisoner, Thomas Beckham, is charged by the indictment with the murder of Francis Fitzgerald on the 16th of May in the present year.

Mr. Fitzgerald was, as I am informed, a gentleman of respectable family and good estate, and of a most amiable and kindly nature. He had some property in this county, and, having married nine short months ago, he came to reside with his wife at a cottage in the neighbourhood of Kilmallock. They appear to have been deeply attached to each other, and they remained joyous in the present and hopeful of the future, until the dismal tragedy, which is the subject of your inquiry, terminated the life of the one and crushed the young heart of the other. On that day, Mr. and Mrs. Fitzgerald left their cottage about three o'clock, to visit a farm some two miles distant. They made their visit, and were returning to their home. They had come about half the way when two men met them, on the open road. It was early evening, and the men were not disguised. One of them cried out to Mr. Fitzgerald, 'Stand, my man, I want your money!' Mr. Fitzgerald put his wife a little apart from him, and answered that he had no money. The man who had before addressed him said, 'Take his life,' or 'Have his life,' or words to that effect, pulled out a pistol, and discharged it. Mr. Fitzgerald staggered. A second shot was fired, and he sank to the ground, bathed in his blood, beside his miserable wife. The men then ran away, and the unhappy lady went to seek for help. She procured it speedily. Her husband was taken to the cottage, and he died at half-past seven o'clock on the same evening. He had been wounded through the neck

and the back by the two pistol shots, and the wounds inflicted undoubtedly caused his death. So far, I apprehend, the facts are clear and indisputable.

There can be no controversy about them ; and I think it is impossible for the imagination of man to conceive a scene more calculated to move the heart with horror and with pity than that which they present. But the vital question for the prisoner, and for justice, is, was he one of the persons who so did to death Francis Fitzgerald ? He was arrested a few hours after Mr. Fitzgerald's death, about four o'clock on the morning of the 17th of May, under circumstances which I shall more particularly detail to you. Upon that day he was produced before Mrs. Fitzgerald, and she will tell you, as I am instructed, without any hesitation, that Thomas Beckham was the man who addressed her husband, and fired the first shot which took effect upon him. It will be for you to say whether you can rely upon her accuracy. Her veracity you will not doubt. Her opportunities of observation I have indicated in my simple narrative. She saw the face; she heard the voice of the undisguised assassin; and the terrible circumstances were calculated to rouse her faculties of observation to the uttermost, and make indelible impression on her memory. It is for you, and for you only, to judge whether you can implicitly rely, at once on her truth and her accuracy. If you can, the identification is complete and the direct evidence conclusive; but the case does not rest there. Circumstances, of a singular and persuasive character, I am bound to state to you in corroboration of the testimony of Mrs. Fitzgerald. In the first place, it will appear that for some days before the murder, the prisoner was occasionally seen in Kilmallock and the neighbourhood ; that, on the day previous to it, he was observed with another person, going in the direction of Mr. Fitzgerald's house, and on the day itself,

between three and half-past three o'clock, he was again observed, in company with a younger man, at Kilmallock Hill, which is not more than a mile from the place where the crime was committed. Beckham was arrested on the morning of the 17th of May at the house of John Lee, of Glenlara, whither he had come on the previous evening. He was leaving the room in which he had been sleeping when the police entered the cottage and took him prisoner. In searching his clothes they discovered in the pocket of his waistcoat a tin box containing seven bullets of various sizes, and some percussion caps; two keys were also found in one of his pockets. I ask you to remember this fact in connection with a matter to which I shall, by-and-by, invite your notice. When Beckham came to Lee's house he was wearing a tall black hat,[1] called in the country a Caroline hat, but when he was about to leave the house in the custody of the police, he took up and attempted to put on his head a straw hat which was lying beside his own. This he was prevented from doing by John Lee's brother, Patrick Lee, who claimed the straw hat as his property. Further, on the 20th of May (Beckham having been in the meantime committed), the police returned to the house of John Lee, and instituting a careful search they discovered in the thatch of an outhouse three pistols. One of these was loaded with a bullet and capped, a second was not loaded, and had the appearance of having been recently discharged, the third was not loaded, and had no such appearance. On the day and at the place of the murder a ramrod was found. This exactly fitted one of the pistols which was without a ramrod, and it corresponded in form with the ramrod of another of the pistols. Here was manifestly very important evidence. But the

[1] Mrs. Fitzgerald had stated in her declaration before the magistrate that the man who fired the first shot at her husband wore a tall black hat.

police, whose zeal, earnestness, and energy merit the highest praise, carried their inquiries further. They went into Limerick, and visited the shops of the various gunsmiths; and on coming to that of Mr. Whitaker and exhibiting the pistols found in the thatch, two of these were instantly recognised by his apprentice, John Doupe, as pistols which had been sold by him to two men about three weeks previously. Doupe himself will describe how these men entered the shop, asked for pistols, inspected some which were shown them and bargained for them, endeavouring to get them at a lower price than he demanded. Four several times, I think, they left the shop and returned, each time chaffering about the cost and making various offers until, at last, they bought the pistols for 1*l.* 2*s.* 6*d.* New nipples were put upon them; a bullet-mould was given along with them, and four bullets which the apprentice cast in the men's presence. Doupe will tell you, as I am instructed, that the two men by whom the pistols were purchased were the prisoners, Thomas Beckham and Denis Delane. Of the latter I think it right only to say, at present, that he was a tenant of Mr. Fitzgerald, and a publican resident in the town of Kilmallock. The pistols were paid for by Delane—Beckham having first inquired the price of them, at the same time telling Doupe to answer loudly, as he was deaf. It will appear that Beckham is deaf, and on that account was called by the people Beckham 'Bawn,' an Irish word indicating a deaf man. Doupe had ample opportunity of becoming familiar with the appearance of the purchasers of the pistols, in his several interviews with them and during the half-hour which he occupied in putting on the new nipples and casting the bullets. I may add that another gunsmith, Mr. Delaney, of Rutland-street in this city, has recognised in the prisoner a man who called at his shop twice in one day, about the

time in question, in company with Denis Delane, for the purpose of buying pistols. I do not pause to point to the inferences which will reasonably suggest themselves, if it be established to your satisfaction that two of the pistols concealed in the roof of the outhouse attached to the dwelling where Beckham was arrested so soon after the murder were the identical pistols purchased by him and Delane three weeks before, to one of which the ramrod found as I have described was precisely suited. One other circumstance in connection with this branch of the case I must not omit to mention. I told you that in the pocket of the prisoner's waistcoat two keys were found. The police discovered, in the house of a man named Keys, a trunk or box the property of Beckham. They applied to it one of the keys taken from his pocket and opened it at once, and amongst the contents which will be described to you was a pistol of a remarkable character and construction, having one barrel and two locks. This pistol was shown to Mr. Whitaker and his apprentice, who both identified it as a pistol which had been left at Mr. Whitaker's establishment, for repair, some months before. It was there on the day when the pistols were sold to Beckham and Delane, and was never seen afterwards, or, I believe, missed at all until it was found in Beckham's trunk when opened by his key. It will be for you to say how far this curious circumstance sustains the statement of Doupe, as to the persons who bought the pistols, if you should think that it needs corroboration. I have now laid before you an outline of the evidence, direct and circumstantial. The minute details you will learn from the several witnesses, and it is for you, as I have said, and for you exclusively, to determine on the value and effect of that evidence. I have not spoken to you of the motive which may have prompted the sacrifice of Mr. Fitzgerald. Under existing circum-

stances I deem it more fit and becoming not to speculate on that, but to leave you to draw your own conclusions from the whole of the testimony which you may receive. So far as I am informed, Beckham was not known to Mr. Fitzgerald—had had no dealings with him—had no ground for personal malice against him, or pretext for complaint of any real or fancied injury. But if this were so, and if, notwithstanding, you shall be clearly convinced that the prisoner, in cold blood, and of deliberate purpose, slaughtered, before the eyes of his young wife, a man who was a stranger to him, and had never done him wrong, the horror of the crime becomes intensified.

Of this and every other part of the case you are the judges; and, having opened it shortly before you, I leave it in your hands, convinced that you will deal with it impartially and justly, between the Crown and the prisoner. You will take nothing for granted against him: you will allow no prejudice or prepossession to operate to his disadvantage: you will recognise the merciful presumption of the law, that he is innocent until guilt be proved home upon him: you will require the proof rebutting that presumption to be clear, concise, and conclusive; and if you have, upon the whole, a rational doubt, such as firm and honest men may rightly entertain, you will give him the benefit of that doubt; but, on the other hand, if you are satisfied that the Crown has established its case, you will do your duty, faithfully and fearlessly, and fulfil your sworn obligation to give a true verdict according to the evidence.

Beckham was found guilty and condemned to death. The sentence was carried out on July 16, two months from the day of the murder and one from the day of the trial.

Walshe for some weeks eluded all efforts made to discover him, but finally, on June 24, he gave himself up to justice. He was put on his trial before Mr. Justice Keogh, at the Limerick Summer Assizes, on July 30 in the same year.

The Attorney-General (Mr. O'Hagan) and the Solicitor-General (Mr. Lawson) again prosecuted, and Mr. Coffey appeared for the prisoner.

Walshe was found guilty, sentenced to death, and executed.

Both the brothers Delane (the contrivers of the assassination) were also tried and found guilty, but the capital sentence was only executed on one of them. The sentence on the other was commuted to penal servitude for life.

SENTENCE UPON WILLIAM MACKEY, CONVICTED OF TREASON FELONY AT THE CORK SPRING ASSIZES, MARCH 1868.

INTRODUCTORY NOTE.

In the Fenian rising of March 1867 William Mackey, a citizen of the United States, who had gained distinction in the American civil war of 1861–64, acted as one of the principal leaders in the South of Ireland.

He was arrested in the city of Cork on February 7, 1868, and afterwards in attempting to escape he shot a constable named Casey in the leg. The wound was slight; but subsequently it gangrened and caused the death of Casey. Mackey was therefore indicted for murder and put upon his trial before Mr. Justice O'Hagan at the opening of the Cork Spring Assizes in the following month, but of this crime he was acquitted. A few days later he was again placed in the dock accused of treason felony, in having, as a member of the Fenian conspiracy, taken part with others in attacks on the police barrack at Ballynocken, with the object of overthrowing the Government of the Queen, and on this charge he was found guilty.

The antecedents of Mackey, the misguided principles of patriotism which would seem to have actuated his conduct, his very becoming demeanour during the trial, and, above all, the fact that he was only quite recently married, and that his young wife was present by his side in Court, combined to surround the case with unusual interest, and to awaken, even amongst those

most hostile to Fenianism, sentiments of compassion for the prisoner.[1]

[1] At the close of the trial, the prisoner, on being asked in the usual form 'Why sentence should not be passed upon him,' made a long and impressive speech, in the course of which he said: 'In conclusion, my lord, though it may not be exactly in accordance with the rules of the court, I wish to return your lordship my most sincere thanks for your fair and impartial conduct during this trial; if there is anything that was not impartial in it at all, I consider it was only in my favour, and not in favour of the crown. This, I hold, is the duty of a judge, and what every judge should do, because the prisoner is always on the weak side and cannot say many things he would wish, while the crown on the other hand have all the power and influence that the law and a full exchequer can give.'

SENTENCE.

William Mackey,—You have been convicted, on the clearest evidence, of a very grave offence. Twice within a few days have you stood before me, charged in two several indictments with the high crimes of murder and treason-felony. I rejoice to say that, on the first, the verdict of the jury, of which I thoroughly approved, relieved you from the fearful danger, which nearly touched your life, and me from the terrible necessity of dooming you to the scaffold. On the second charge, you have been convicted by another verdict of which I equally approve; and it now becomes my duty—you did not err when you said my very painful duty—to pronounce your sentence, and that sentence, mitigate it as I may—not less in accordance with my own feeling, than with the recommendation of the jury, in which that feeling finds its sanction and justification—must be a heavy one. From whatever motives you may have acted—and I attribute to you none of a mean or sordid character, whether from the love of adventure fostered on the battle-fields of the great nation of which you claim to be a citizen, as would appear from your address to-day, or from misguided political enthusiasm, you have broken the peace and defied the law of this country, by deeds of reckless daring; and it is necessary that, by your punishment, others should be deterred from disturbing that peace and outraging that law hereafter. There are circumstances in your position and there have been qualities in your conduct entitling you

to all the consideration which can be given to the merciful intervention of the jury in your behalf; and I shall endeavour, so far as may be consistent with the duty imposed upon me by my office, to give effect to that intervention. You have a young wife from whom you will be severed at the period which should be the happiest of your existence. On your first trial and your last there was in the evidence much to indicate your possession of a humane and gentle nature—which shrank from the sacrifice of life and mitigated the mischief of the lawless acts to which you were unhappily a party. I am very sorry for you and for the poor girl who must suffer in your suffering; and I shall not aggravate the pain of your position by any harsh words of mine, or attempt, by useless argument, to alter the opinions you have avowed to-day. You will have time enough, in the dreary hours of your inevitable detention, to reconsider those opinions and modify them by calm reflection; and I have no doubt you will yet mourn for the misspent energy and the criminal folly of the past. But I would say a word to those with whom you have been associated, or who may be disposed to imitate your conduct to their own destruction and to the great detriment of the country, to which many of them, I doubt not, have a sincere attachment—I would appeal to them to be warned by your example, that they may avoid your fate—I would ask them to be instructed by the lesson of your trial, repeated for the thousandth time, that secret conspiracy brings ruin, swift and sure, on all who engage in it—that the informer and the spy will ever be found dogging treason to its doom, —that the law is strong enough to assert its mastery, and political improvements are vainly sought by violence and bloodshed;—I would ask them to listen to this warning voice which has come to them across the Atlantic—the voice of a man of high ability, to whom they should surely

hearken with the trust which he must have earned from them by lengthened exile and all its suffering and sacrifice for principles like their own, and in a course as desperate as theirs—and when they hear John Mitchel expose, with courageous truthfulness, the gigantic delusion by which they have been fooled, the fatuity with which they have obeyed leaders wiling them to destruction, the vanity of their fantastic hopes, and the utter impotence of their weak endeavours in the circumstances in which they stand, they should respect his counsel and abandon their evil movement. And, for myself, as one who is not less a lover of his country and of its generous and kindly people, because he wears the ermine of a judge—as one who knows that loyalty to the sovereign and reverence for the law are perfectly compatible with the deepest devotion to the real interests of Ireland—I would entreat men of honest mind and pure intention, of whom I believe you to be one who have been wretchedly misled, to relinquish an insane struggle against the irresistible power of a mighty empire, which can issue only in disaster to themselves. I would implore them to abandon the hopeless efforts which, so far as they have had effect at all, have filled this island with terror and unrest—have obstructed its industrial progress, poisoned the sources of its national prosperity, and brought sorrow and desolation to the homes of men, enduring now the living death of penal servitude, who were endowed, like you, with faculties and feelings which should have won for them a better fate—I would tell them that under the shadow of the freest constitution which belongs to any European land—within the limits of the law which, fairly and honestly administered, secures to the subjects of this realm all legitimate privileges and all reasonable liberties—the Irish people, without blood or crime, by united, energetic, and persevering action, can achieve the redress of every

grievance and the concession of every right. That they have power to do so is vouched by the peaceful triumphs of the past; and sure I am, there never was a period in which the Imperial Legislature was more disposed to entertain the just claims of Ireland, or the British nation more willing to allow them. It will be her own fault if—with full power of self-assertion—walking in the safe and open ways of the Constitution, she does not gain all that she can rightly demand. And it is one of the deadliest sins against God and man to seek what can be so accomplished through the unspeakable horrors and crimes of sanguinary revolution. I have thought it not unfit to say so much on this occasion, in the hope that my words may not be wholly without effect. They are, at least, the utterance of honest feeling, and they should not have less influence, because they are spoken from the judicial seat which makes its occupant equally and absolutely independent of the Crown and the people, and lifts him above the disturbing influences of hope and fear. And now it only remains, that I pronounce the sentence, which I have measured carefully after the most anxious consideration. I have taken into account the recommendation of the jury, which enables me to make it less severe than it must otherwise have been. But, even so, the interests of society and the requirements of the law bound my power of mitigation; and it is, I regret, my most painful duty to send you, in the flush and vigour of your young existence, to penal incarceration for a lengthened period. Still, that period will not preclude the hope that, even should you end it in a prison, you may return to the world and your home in the prime of your days, and yet pursue the paths of industry and honour—a sadder but a wiser man. The sentence of the Court is, that you be detained in penal servitude for the term of twelve years.

PARLIAMENTARY SPEECHES

A SPEECH DELIVERED IN THE HOUSE OF COMMONS, JULY 18, 1863, *IN OPPOSING A MOTION TO REDUCE THE VOTE FOR THE EXPENSES OF NATIONAL EDUCATION IN IRELAND.*

INTRODUCTORY NOTE.

On the retirement of Mr. O'Connell, in the month of May 1863, from the representation of Tralee, Mr. O'Hagan, who was then Attorney-General, offered himself as a candidate for the borough.[1] An attempt was made by the Conservatives, in coalition with the Nationalists, to oppose his return, but it was not persisted in, and Mr. O'Hagan was elected without a contest.

About this time there was, amongst the majority of the Catholic bishops in Ireland, a movement adverse to the national school system. This was chiefly owing to the recent establishment throughout the country of model schools vested in the commissioners as a corporate body and under their direct control; the introduction of which institutions indicated, in the opinion of the bishops, a development of the national system in the direction of State primary education.

The Nationalist newspapers, as might have been expected, endeavoured to turn to Mr. O'Hagan's disadvantage, in the Tralee election, the fact of his connection with the National Board. When, therefore, he was declared member for the borough, and came forward to thank his constituents, he took the opportunity,—feeling that he owed it to them and to his own reputation,—to state the grounds on which he claimed their approval of his conduct in supporting the national system, and of his action in the capacity of a commissioner. His speech on this occa-

[1] *Vide* Note F. at the end of the volume.

sion[1] drew from Archbishop (afterwards Cardinal) Cullen an expostulatory letter, which was published in the form of a pamphlet.

Mr. O'Hagan was at first tempted to reply, but, on consideration, he judged it better to avoid controversy, especially with one holding the position of Archbishop, and one with whom he had been always on terms of confidential intimacy—a relationship which continued unchanged until the Cardinal's death.

It happened, however, that almost contemporaneously with the appearance of the pamphlet Mr. O'Hagan had an opportunity in the House of Commons of again speaking on the subject.

On June 18 Major O'Reilly, one of the members for Longford, moved in committee of supply that the vote demanded by the Government for the defrayment of expenses incurred by the Board of National Education in Ireland in the erection of model schools should be reduced, and characterised these schools as expensive and unnecessary. In the debate which followed the controversy widened itself, and took in the whole system of national education; and when Mr. O'Hagan rose to oppose the motion he entered into a defence of the system, and he was content with his vindication of it as a becoming and sufficient answer to the Archbishop.

[1] *Vide* 'Occasional Papers and Addresses,' by Lord O'Hagan, K.P.

SPEECH.

The observations which have fallen from the hon. and gallant colonel, the member for Longford,[1] and the hon. member for Dungarvan,[2] affecting not merely the motion before the Committee, but also the general principles and operation of the national system of education in Ireland, appear to me to render it proper and necessary that, as one of the Commissioners who control that system, I should say a few words in reply. I desire to approach the question in the spirit of temperance and moderation, with the sincerest respect for the opinions of those who differ from me in the House and in the country; but with the deep conviction that in undertaking an onerous, difficult, and often thankless task, I and my colleagues on the Board are labouring honestly for the real good of Ireland. I rejoice that a controversy, which has so often occupied the attention of Parliament, is agitated once more, on this occasion, because it affords me the opportunity of briefly stating the grounds on which, in spite of obloquy and injustice, and many circumstances of discouragement, we continue to administer an institution which we believe to be, in its practical operation, of the utmost benefit to the Irish people. Thirty years ago that institution was established by the letter of Lord Derby, which will ever be one of his highest titles to be named with honour in the history of the empire. Theretofore, the state of the education of Ireland was lamentable in the extreme. The worst period of the

[1] Colonel Greville. [2] Mr. Maguire.

penal times had passed, and it was no longer forbidden to a Catholic schoolmaster to instruct a Catholic pupil, or to a Catholic parent to develop the opening intellect of his child, on peril of a felon's doom. But the spirit of sectarian ascendency obstructed every effort for the mental progress of the masses; and experiment after experiment failed of useful result, because the perversion of their faith was always made the condition of that progress. They rejected the condition; they clung to their religion at all hazards, in the noblest spirit of self-sacrifice, and they refused the bounty of the State because it maintained a dangerous machinery of proselytism. Its schools were sectarian, and useless to the great majority of the people. Catholics were poor, and unable to supply for themselves that education which the Government denied them. They had few teachers worthy of the name; the books they were able to procure were often of the worst description; and their educational appliances and opportunities were of the most miserable character. When religious and social equality had been conceded by the Relief Act, it was promptly followed by Mr. Stanley's memorable proposal to afford to Ireland a system from which should be banished the suspicion of proselytism; which should admit to the enjoyment of its advantages children of all persuasions, and avoid interference with the religious convictions of any. Accordingly a mixed Board, comprising many eminent persons, was constituted; and that Board has been working ever since, through all the changes of thirty years, encountering opposition of the most various character—not perfect in its action, or free from faults of many kinds—not dispensing with the necessity of jealous vigilance on the part of the public as to its principles and conduct—but, on the whole, working with a success which has never waited on any other scheme of

Imperial administration in Ireland, and with an amount of national advantage which has gained for it unexampled adhesion from all classes of the community. Its progress and expansion have been steady and unbroken ; and noting them as they have appeared at the commencement of four successive decades, we have the most conclusive evidence of the general acceptance it has received. In 1833, the schools were 789, and the pupils 107,042. In 1843, the schools were 2,912, and the pupils 355,320; in 1853, the schools were 5,023, and the pupils 550,631; and at the beginning of 1863, the schools were 6,010, and the pupils had reached the enormous number of 811,973. And this marvellous advance has been made, notwithstanding the poverty and misery which, from time to time, have pervaded the kingdom, the continuous and exhausting emigration which has prevailed, and the terrible diminution of the people. And, although, in later years, there has been much agitation against the Board, growing greater, as it seems to me, in proportion to the removal of real grounds of objection to its principles and management, it has continued to attract still more the substantial support and confidence of all denominations. Since January 1, 1861, 520 new schools have been taken into connection with it, of which the patrons may be thus described—clergymen and laymen of the Established Church, 106; clergymen and laymen of the Presbyterian Church, 91; Methodist clergymen, 32; clergymen and laymen of other Protestant communities, 4; Roman Catholic clergymen, 265, and Roman Catholic laymen, 22—in all, as I have said, 520. And, during the same short period, the applications for building grants—which have been largely stimulated by one of the great improvements introduced by my right hon. friend, the late Chief Secretary for Ireland [1]—have numbered

[1] The Right Honourable E. (now Lord) Cardwell.

136, 29 of them having been made by members of the Established Church, 6 by Presbyterians, and 101 by Roman Catholics. In the face of these facts and figures, will honourable members persist in the assertion that the national system as a whole, is distrusted, or disliked, or repudiated by the people of Ireland? But, more than this —whilst, during those thirty years, the schools of the Board have studded the island from the centre to the sea— whilst its unchecked influence has penetrated to the remotest districts, and pervaded almost every hamlet and hovel in the land—amongst the millions of children of every persuasion who have been subjected to its training, not a single case of proselytism has ever been established. There may be objections to it in the abstract—there may be suggestions of the possibility of evil to arise in future days, but the great, pregnant, persuasive fact is this, that, in a country distracted as no other has ever been, by fierce controversies—vexed as no other has ever been, by the virulence of sectarian animosity—tormented as no other has ever been, by the intrusive efforts of misguided zeal, which has prompted so many to neglect the business of their own salvation and meddle with the religion of their neighbours—the promise of Mr. Stanley has been practically fulfilled, and proselytism, and attempts at proselytism, have been prevented, as they never were before, by the operation of a system which offers its secular advantages to all, and forbids interference with the faith of any.

This appears to me to be the position of that system considered in its origin, its progress, and its results. It has expanded the minds and awakened the energies, and lifted up the hopes of millions of the poor; and no man can say, truly or with a pretence of proof, that it has disturbed or altered the religious belief of any one of

them. And, therefore, it has been, upon the whole, notwithstanding such defects as are incidental to human institutions, a source of benefit and blessing to the inhabitants of Ireland of every class and creed. Believing it to have been so, I have not shrunk from the honest statement of that firm belief, and I do not hesitate confidently to repeat it here. But now, a word as to the model schools, in relation to which this discussion was originated. I listened with attention and respect to the calm and able statement of my honourable and gallant friend the member for Longford. He has pressed with much force the argument against the absorption of the control of education by the State; and he has cited great authorities to establish that its monopoly of that education is full of danger and mischief. I do not follow him through the mazes of the controversy on this question because, in the abstract, I do not substantially differ from him, or any of the statesmen and publicists whose opinions he adopts. Unquestionably, the condition of the nation which educates itself, and by its own public sentiment and its own spontaneous efforts supplies and directs the mental training of its inhabitants, is preferable to that of a people whose Government despotically moulds its scholastic establishments. Just as the chief glory of our constitution is that, under it, the free opinion of the community is ever ultimately paramount, and determines the course of legislation and the administration of public affairs, making the Legislature its exponent and the Executive its minister—so it seems to me, that the system of national education is most desirable which is regulated by that free opinion, untrammelled by the strictness of State control.

That is, I think, in principle, the best system—that is the ideal, towards which the inhabitants of a constitutional country should labour to advance. But in dealing with a

practical question, we must consider the circumstances in which we are called to act, and the extent to which it may be possible to apply true doctrines and sound theories to the real business of life, with the most beneficial results to the working of the body politic. Now, even in England, with all its abounding wealth, and all the educational endowments which have been bequeathed to it by the pious charity of its people, it has not been found possible to dispense with the aid—involving, more or less, the controlling intervention—of the State, and to rely for the education of the masses on their own independent efforts. Far less has it been so in Ireland, misgoverned as she has been, impoverished as she is. To give her a national education, in any way adequate to her intellectual wants, the ample assistance of the Legislature has been absolutely necessary and generously supplied. As to the great body of her common schools, numbered by thousands, and giving to hundreds of thousands as good secular instruction as is afforded to any population in Europe, they are under local patronage and local control, and those who know their real condition do not feel that they, more than the common schools of England, are, in any way, unduly pressed by the weight of the influence of the State. They are aided by it; they are inspected by its officers; they accept its assistance freely, on conditions which their patrons perfectly understand, and, within those conditions, their action is entirely free and independent.

The model schools are of a different character, for they are directly under the National Board, which is their patron. But it behoves us to consider the state of things in which they were established, the necessity which created them, the sanctions they have received, and the nature and results of their operation, before we can rationally determine as to the grounds of the condemnation we are asked

to pronounce upon them. In the first place, it is impossible to say that some model schools are not necessary in Ireland —some schools which could prepare young teachers, and give example and direction as to the principles, the course, and the effects of their teaching. In every great scheme of education such schools form a necessary part. In every nation they have been established; and when the venerable founder of the great institute of the Christian Brothers contemplated the holy work to which his life was dedicated, one of his earliest acts was to provide an institution for the training of those who were to teach. When Mr. Stanley's letter was written there was no machinery in Ireland by which such training could be effected. Its creation was of manifest necessity, and as manifest was the necessity of the action of the State, if it was to exist at all. No one then thought of erecting it by voluntary effort. No one supposed that it could be worked under local patronage, or without the central supervision of the Board. It was no afterthought, as has been repeatedly alleged and asserted, even in the course of this debate. In the letter which was addressed to the Duke of Leinster in 1831, Mr. Stanley suggested the establishment of a model school for the training of the future teachers of the country. In 1833 such a model school was opened in Dublin. In March 1834, the Commissioners proposed to the Government that Ireland should be divided into districts, and that each of them should have a model school. In June 1835, in reply to a communication from Lord Normanby, they specifically advised the erection of thirty-two district model schools. In their Report of 1837, they advert to the future organisation of those schools, and refer to the residence of boarders in them; and although, I believe, from the difficulty of legally obtaining sites without a charter of incorporation, their further progress was postponed; as soon

as a charter for that purpose had been obtained, in pursuance of a recommendation of the Report of 1844, it was announced, in the Report of 1845, that six sites had been selected. In the Report of 1846, the Commissioners stated the plan on which they meant the schools to be conducted. In the Report of 1847, they stated that the building of six had been commenced; and in their subsequent Reports they announced the successive opening of each—four having been opened in 1849 and the others afterwards. Therefore, it is idle to talk of the project of model schools as having been an afterthought. Right or wrong, it had its birth with the system, was always openly avowed, and, from year to year, kept prominently before the attention of the country. There was no concealment. There was no surprise.

Well, how did the country deal with the matter to which its notice was so invited during all those years? In 1831, Dr. Doyle, the great Bishop of Kildare and Leighlin, one of the most gifted and remarkable men who have ever adorned the Catholic Church in Ireland, or in any other nation, thus addressed his clergy:—'The rule which requires that all teachers henceforth to be employed be provided from *some* model school, with a certificate of their competency, will aid us in a work of great difficulty—to wit, that of suppressing hedge schools and placing youth under the direction of competent teachers, and of those only.' From 1831 to 1840, whilst the purpose of the Commissioners was so publicly avowed, there was neither remonstrance nor protest against it. In 1840 the Catholic Bishops resolved—'That it would be very desirable to have a model school in each of the four provinces, when the funds of the National Board of Education might be found sufficient for that purpose, as such establishments would inspire the inhabitants of the provinces with greater

confidence in the system of national education.' And the Prelates advised that the lecturers appointed to instruct Catholic teachers in the principles of religion, morals, and history should be Roman Catholics, indicating that these schools were not, at that time, expected to be exclusive. I am not aware that, before the year 1858, when the Commissioners had either actually built, or contracted for, or undertaken to provide, every one of the model schools now existing or in progress, there was any general or combined expression of opinion against them uttered by the Catholic Prelates. Some of these, including the late venerable and pious Dr. Blake, were favourable, some were adverse, to those institutions; but, until the Board and the Government had been actually committed to the formation of the existing schools, there was no general protest against their progress.

I have gone through this brief history, not for the purpose of arguing that acquiescence constitutes estoppel, or that anything wrong in the principle, the operation, or the extent of these schools is not perfectly open to correction and revision, but that it may be suggested to the mind of the committee whether, all at once, and without much consideration of existing circumstances, it is reasonable to expect that a system so slowly developed—with such full publicity, and with such high sanction, tacit and expressed—can be abandoned. It has already been stated that no further model schools, beyond the twenty-six existing or in progress, can be established without the express assent of Parliament. That was the undertaking of the late Chief Secretary for Ireland, and it will be rigidly fulfilled. It is clearly within the power of Parliament and the Board to deal even with these as the circumstances of the country and its well-considered interests may appear to demand, and the modifications which have already been

made in the agricultural schools prove that the Government is not unmindful of those circumstances or indifferent to those interests.

But some of the arguments that have been pressed by my hon. and gallant friend are not altogether tenable. Whatever may occur hereafter, it is plain that, heretofore, if the Commissioners had waited for local contributions towards the maintenance of training schools, such schools would never have existed. Even for the maintenance of common schools, they have been utterly unable to enforce their rules as to such contributions. Again, I concur with the hon. and gallant member that these schools were not designed for the education of the wealthier classes, but if, in various districts, denuded of the means of popular instruction, some of those classes take advantage of the model schools, how can they be prevented from doing so? In the schools of the Christian Brothers, I have myself observed the presence of the children of persons of respectability and position, for whom their parents desired the benefit of the admirable education which those schools afford. Then, again, as to the expense of the model schools, the hon. and gallant gentleman has not exactly taken a fair mode of considering it. These schools have a peculiar constitution, involving peculiar outlay. They are at once schools for the training of teachers and the education of pupils, and they require an amount of expenditure wholly different from that of the ordinary schools. It is not reasonable to lump together the entire of that expenditure, to take the number of pupils, divide it amongst them, *per capita*, and then say that each child costs the State so much.

Again, it has been asserted that the teaching power of Ireland is more than sufficient for its needs, and that therefore the expenditure is excessive. I say that the

fact is otherwise. There are, I am informed, some 7,000 teachers who ought to be trained. But of these 3,300 only have actually been so, and the condition of the rest requires to be considered. There is a deficiency and not an excess of skilled teaching power; and when I say that the training schools of Great Britain cost the country, in addition to numerous local contributions, 104,700*l.*, whereas the Irish model schools of all classes, and the Dublin training schools besides, cost only 36,600*l.*, and have no local aid, it will, I fancy, appear to the Committee that Ireland is not specially favoured with assistance from the Imperial treasury.

It is objected that there is no provision for religious training in the model schools, but, in reality, a longer time is given for religious instruction in them than in the greater number of the ordinary schools; the attendance of the clergy of all denominations is earnestly sought, and the Commissioners do not permit that any child should be present at any instruction where doctrines are taught other than those of his parents' faith. For my own part, I desire that this rule should apply universally to all the schools in connection with the Board. And, as regards the teachers in training, it is quite within the competence of the Commissioners to decide whether it be not in perfect harmony with the great principle of Mr. Stanley's letter to have separate establishments for the residence of the pupils—with religious observances conducted in each in accordance with the religious persuasion of its inmates—to which establishments — when the daily secular instruction imparted to all in common is ended—they may go and live under family discipline as in their respective homes.

I have detained the Committee too long, and I feel I should not be warranted in entering at this hour upon many details which under other circumstances I should be

happy to discuss. But, late as it is, I must advert to the suggestions that have been made as to the substitution of another system of education for that which exists in Ireland. This is the great question—this is the real matter in controversy. The question as to the model schools is absolutely nothing in comparison with it. Their action affects some 10,000 children; but, with the maintenance of the ordinary schools, the interests of 800,000 are bound up for good or evil. Behind that question, everyone feels and knows that there is another, affecting the very existence of the national system. Those schools may be made more or less numerous; their constitution may be maintained or modified to suit the exigencies of opinion or the changing circumstances of the country; and still the system to which they are attached may continue unbroken, enlightening and improving the Irish people.

It has been avowed by some of the hon. members who have addressed the Committee, that their real object is to annihilate that system and put another in its place. That is the object which is really worth deep and grave consideration; that is the proposal which must vitally affect, for good or evil, the destinies of the country. And now, I ask, if that object be achieved, what will be substituted for a system which, impeachable though it may be on particular points, has, for thirty years, been educating, with perfect safety to their religious faith, millions of our people? Those who would destroy it demand another system—the denominational system, or the separate system. I address myself to hon. gentlemen with whom I am most identified in sentiment, and I say that, in my judgment, the concession of that demand would be, in the peculiar circumstances of Ireland, detrimental to the interests of the country, and eminently to those of the Roman Catholic religion. If, indeed, a scheme of education could be adopted so excellent

and efficient as that of which some of my honourable friends have spoken—as conducted by the Christian Brothers—I could understand the preference given to it, and the desire that those highly informed and admirable men should impart to the poor of their own Church the purest spiritual with the soundest secular instruction. Their schools have received warm and unmeasured praise from the Endowed Schools Commission; and everyone who is acquainted with the working of them, will acknowledge, as fully and delightedly as I do, how nobly that praise has been earned. But those schools are available only to a small minority of the people. They do not present the alternative which must be accepted by millions, through the country districts, if the National Board be overthrown. That alternative must be, necessarily and avowedly, the denominational or the separate system, supported by the money of the State.

Now, the land of Ireland and the wealth of Ireland are still enjoyed, in a very large proportion, by the Protestant population. The Catholics are rich only in numbers; and, notwithstanding great individual progress, their circumstances are comparatively humble and dependent. Are you prepared to accept the denominational system of England, which makes the contribution of the Treasury dependent on the contribution of the district; and do you really believe that that system will work beneficially for an impoverished community who at present are able to contribute only a miserable fraction of the aid required from them towards the education of their children? But, you may say, 'Let us have separate grants. Some of the advocates of the Church Education Society ask for them. We demand them too.' Well, before you combine with the Church Education Society, interrogate it on two points. Ask it, does it desire that grants should be made in

proportion to the numbers of the people, simply and fairly, and without condition or qualification? I apprehend the answer will be that it means no such thing; and that such a thing, even if it were possible, would not, in their judgment, be desirable at all; that the giving over of 70 or 80 per cent. of the public money to the disposal of the Catholics is an act of liberality of which they never dreamt. Ask again, will that society consent, upon the establishment of the separate or the denominational system, to the exclusion of the Catholic child from the Protestant school? Again, the answer will certainly be in the negative. That, they will say, would be a monstrous infringement of Christian liberty. Every school must be open to every child who chooses to come into it. What will follow, if this be so—if the change you desire must be accomplished on terms like these? Why, that the establishment of the separate system in any form in which it is possible or imaginable would give immensely increased power of interference with the faith of the Catholic millions—that in every parish you would have a school organised by the richer classes and subsidised by the State for the purposes of such interference with the Catholic poor. They would be open to all the influences of coercion and corruption—they would be exposed to all the allurements which a superior education, provided by men of large means, having no humble children of their own communion to care for, would certainly hold forth. Through multitudes of districts the Catholics would be without sites for schools, or power to supply the contribution on which the subvention of the State would be necessarily conditional.

In such a state of things they would contend at terrible disadvantage, and the security they have enjoyed for so long a time under the National Board—its stringent

rules and its careful inspection—would be done away with. Wherever a wealthy proprietor or a zealous clergyman might think proper to erect a schoolhouse, with the help of the public money, every child who could be enticed or compelled to enter it would receive a Protestant education. For myself, I can only say that, being a Catholic who desires fair play for his religion, I am not bold enough to run the risk of such a change as that, upon the strength of any abstract theory. I know that, under the national system, the faith of the Catholic people has not been disturbed—I know that at the end of more than thirty years, during which it has had universal and unchecked operation upon their minds and hearts, they are more devotedly and warmly Catholic than they were at the beginning. I am not prepared to deprive them of the safeguards it has afforded, tested, as they have been, by a long experience, and proved, I repeat, almost beyond belief, efficient, by the amazing fact, that there has been absolutely no instance of change of religion amongst the children of the national schools, since their earliest institution.

I shrink from an untried experiment, calculated to evoke in Ireland more formidably than ever the spirit of proselytism, so long its most intolerable curse—which demonstrated itself in other days by confiscation and bloodshed—by the barbarous inhumanity of the penal code—by the cruelty and corruption of the Charter schools—by the masked intolerance of the more insidious societies which succeeded them, and which, wherever it prevails, in Ireland, at this moment, breeds strife and malice and all uncharitableness amongst her people. I believe in my conscience that the denominational system of England, or the separate system in any form in which it is possible to hope for the concession of it, would give that evil spirit

new vitality, and inflict incalculable mischiefs on the country. I know that it is paralysed by the national system, with which it cannot actively or successfully co-exist; and I should bitterly lament if, by the destruction of that system, it should be permitted to breed again amongst us, more noxiously than ever, social confusion and sectarian strife, in the desecrated name of religion, and with the assistance of the perverted bounty of the State.

Considering all these things, and looking at the entire question as a Catholic zealous for his religion, and an Irishman who desires to see his countrymen united, prosperous, and happy, I hold it my bounden duty to sustain a system which I believe to be a thing of necessity in the actual circumstances of the country, and which I know to have been, in its results, of incalculable benefit to all her people. It is not, I repeat, in all respects as I would have it. It is not

> The faultless monster which the world ne'er saw;

it has its errors to be rectified, and its shortcomings to be supplied; but in any matter in which it is really open to objection it can be improved; and, taking it for all in all, its advantages I believe to be immense. As it stands, it carries out fairly the principle of social equality, which the Act of Emancipation established; and I believe it is now guarded against any abuse in its administration, as fully and as carefully as any institution of the sort can be. I do not forget that, when the security for the justice and impartiality of that administration was not nearly so complete as it has been recently made, one of the purest and noblest men who ever breathed—the late Most Rev. Dr. Murray—clung to the system under circum-

stances of peculiar trial, because he believed it to be essential to the well-being of his country and his faith. He was a Commissioner of National Education from the establishment of the Board, and he continued to sit upon it till his lamented death. In 1839, representations had been made to the Holy See against it, and an adverse decision was, for a time, anticipated. In that state of things Cardinal Fransoni wrote to the Archbishop and suggested that he might retire from the commission before any condemnation should be pronounced at Rome. He answered, defending his own conduct in continuing upon it, and expressing his belief that the explanations which he gave would secure him immunity from blame, and prevent any adverse decision. And he concluded his letter thus:—'Should that event, however, arrive, no other alternative will be left for me than to relinquish into the hands of Protestants, as heretofore, the public aids bestowed for the education of the poor—leaving them to be expended, as I fear they will be, on attempts to weaken the faith of our young people. I shall also recede from the Board, prepared to deplore with my latest breath the calamities which I foresee will result to religion from such a course;' or, as it is in the original, '*Ploraturus, usque ad extremum halitum, mala quæ religioni nostræ inde sunt eventura.*' These are memorable and touching words. They seem to me as full of wisdom as of pathetic eloquence; and the lesson they convey is worthy the consideration of Ireland. She is still in the infancy of her national progress. Only for a quarter of a century has she ceased to wither under the blight of religious disability and sectarian rule, and she is still struggling painfully through a transition state. But I confidently hope, I fondly believe, that a great and happy future awaits her yet; and I am well assured that, if it is

ever to be realised, she must achieve it through the cultivation of that sound intelligence, that social harmony, and that mutual trust among all her people which the National System, fairly and justly administered, appears to me destined to create and to maintain.

A SPEECH DELIVERED IN THE HOUSE OF COMMONS, APRIL 8, 1864, *OPPOSING MOTION FOR A SELECT COMMITTEE TO INQUIRE INTO CERTAIN ALLEGATIONS AGAINST THE FATHERS OF THE BROMPTON ORATORY.*

INTRODUCTORY NOTE.

In the House of Commons on April 8, 1864, on the motion for going into committee of supply, Mr. Newdegate moved for a select committee to inquire into the allegations contained in the petition of Mr. Alfred Smee (presented on February 19) relative to the St. Mary's, Sydenham, burial-ground; and, further, into the existence, increase, and nature of the conventual and monastic communities, societies, or institutions in England, Wales, and Scotland. Mr. Newdegate detailed the circumstances of the conversion of the late Father Hutchinson (brother-in-law of Mr. Smee) to the Roman Catholic religion, his ordination as a priest of the Oratorian congregation at Brompton under Father Faber, and his recent death and burial at the burial-ground of the community at Sydenham. He directed special attention to the fact that the will of Father Hutchinson had been drawn out under the influence of Father Faber and executed by two other priests of the Oratory: that will bequeathed a considerable sum of money to the community. A day or two after Father Hutchinson's death Mr. Alfred Smee, as his nearest relative, visited the burial-ground and applied for an extract from the register. He complained that this was a secret burial-place and had never been gazetted or inaugurated in such a way as was required by the law of this country. Mr. Smee further stated that the names of the deceased were so altered on the tombstones and the register, by the interpolation of another name between the Christian and surname of the

deceased, as to render their identity difficult—as, for example, William Hutchinson was described as William Anthony Hutchinson. He (Mr. Newdegate) said it was a felony for any person to tamper with the register of burials or to alter the names of the deceased so as to avoid identity. He therefore moved for a committee to inquire into the circumstances of the case, which, he declared, was the more necessary inasmuch as it was evident that convents, monasteries, and similar religious communities were alarmingly on the increase in this country, although a clause in the Act of 1829 was especially introduced for the purpose of restraining their growth.

Mr. O'Hagan, Attorney-General for Ireland, opposed the motion.

After a lengthened discussion the House divided, when the motion was negatived by a majority of 113 to 80.

SPEECH.

The observations of the hon. and learned member for Oxford[1] appear to me to call for a reply. I differ entirely from his view of the law, and I may be permitted, in a few words, to show why I do so. I should not, perhaps, on this account only, have interfered with the discussion, especially after the touching and beautiful speech of the noble lord[2] the member for Arundel, which has so moved the House, but that I have the honour and the happiness of knowing some of those who have been foully slandered by the petition of Mr. Smee, and in the comments on it, in and out of Parliament, and that I desire to aid in repelling the unworthy and baseless accusations with which they are assailed. I do not intend to notice many of the charges against the living and the dead which have been so lavishly employed to accomplish the purpose of this motion. I do not deem it necessary to defend the memory of Father Faber, who was a man of high genius and an accomplished scholar, as well as a devoted priest, and of whom Englishmen, of every denomination, should speak with respect and deference. Nor shall I pursue the wanderings of the hon. member for Warwickshire[3] through the various countries of Europe on a tedious and fruitless quest of precedents, which are not applicable, or should be avoided in our own. But of the Oratorians of Brompton I wish to say, with the knowledge which a Catholic should possess, but which may not belong to hon. gentlemen who are

[1] Mr. Neate. [2] Lord E. Howard. [3] Mr. Newdegate.

not Catholics, that the constitution of their society brings them in no way within the operation of the criminal law. They are secular priests, bound together by no vows, and free to separate at any moment and for ever, each possessing his own peculiar property and disposing of it according to his will, all voluntarily associated for the better fulfilment of their sacred ministry. The penal clauses of the Roman Catholic Relief Act do not affect them at all, and it would be as reasonable and as decent to impugn, in the absence of all proof, the reputation of any other ten or twenty gentlemen, of any religious persuasion, inhabiting the same house and blamelessly pursuing common objects.

But, though they are known to be gentlemen by descent, educated like yourselves in the public schools and universities of England, and men whose past histories are without stain, they encounter a calumnious attack which would never have been attempted if they were not Catholic priests, and which it is unmanly as it is unjust to direct against them, because their position and profession make them powerless to defend themselves. What business has any one to drag before the world their personal concerns and pry into the doings of their household? By what right are they exposed to popular odium on false assumptions, and dark insinuations, and baseless assertions, such as have occupied the House to-night? Anything more futile and flimsy than the case preferred against them it is impossible to imagine. They are charged with the design of luring young men into their establishment, that those young men may be induced to part with property to their community, and live, and die, and be buried in secret, so that that property may be irrecoverable by relatives or friends. And this cruel charge rests absolutely on the two points, that they have a private burial-ground, and

that Father Hutchinson bequeathed some money to Father Faber.

As to the first, it has been conclusively disposed of by the right hon. baronet the Secretary for the Home Department.[1] They have a private burial-ground, and the law gives them a perfect right to have it. It has been constituted with the express approval of the proper legal authority. It has been inspected by the proper legal officer, and found to fulfil all the legal conditions of decency and security, and due regard to the sanitary necessities of the neighbourhood. There is not the shadow of a pretence for impeaching the Oratorians in this regard. They have exercised an ordinary legal right under the ordinary legal sanctions; and I cannot possibly conceive how the insertion in the inscription upon one of their tombstones of an additional Christian name, received in religion or confirmation, can furnish ground to any rational being for the accusation of criminality, or for the smallest suspicion of fraudulent design. The law requires a registration of deaths and not a registration of burials, and, in this respect also, the assault on the Oratorians is entirely illusory and unwarrantable.

Then, as to the second point, the bequest of Father Hutchinson. If that bequest be assailable, it should be assailed, not in the House of Commons, but in a court of law—not on calumnious statements and by reckless imputations, but on evidence of facts, submitted to a tribunal competent to consider and decide upon it. My hon. and learned friend the member for Oxford is utterly mistaken in supposing that a will is not legally impeachable on the score of undue influence, such as is alleged, and, as I believe, falsely alleged, to have been exercised in this case.

[1] Sir George Grey.

In Ireland, and in England too, the Probate Court has continually to deal with such allegations; and when they are established against persons of any religious denomination, testamentary dispositions are condemned and nullified. If they could be maintained against the will of Father Hutchinson, the law is strong enough and clear enough to make it wholly inoperative. But, because they cannot, the question is withdrawn from the legitimate jurisdiction of the Judge and the jury, and dragged into this House, which has no means of inquiry and no power of adjudication—that sectarian feeling may be aroused, and sectarian passions brought to bear upon it. Father Hutchinson was an able and an eminent man; he was, originally, as the hon. member for Warwickshire has said, a member of my own profession. He abandoned it, and devoted his life to the duties of a higher calling. He was astute and accomplished, and distinguished in the world of letters; and when he made his will—long before his early and lamented death—he was in the prime of his life and in the full possession of all his faculties. For eighteen years he had been a priest of the Oratory. He died when he had scarcely passed his fortieth year. He had a fortune of thirty or forty thousand pounds, and, exercising the freest and fullest control over that fortune, he spent the greater portion of it in works of charity and Christian benevolence. He established ragged schools in the neighbourhood of Holborn; he was a munificent benefactor of the poor—he had a large heart and an open hand; he never wearied in the way of well-doing. It was found at his death that he had spent in the service of his fellow-beings the whole of his property, save some four or five thousand pounds, and this he left to Father Faber, in whom he justly reposed unbounded confidence. He made the disposition years before his departure from this world, and this

he did in the exercise of a right common to all the subjects of the Queen—a right which was not forfeited because he became a Catholic and a priest of the Catholic Church. If it was exercised under improper influence, I repeat, the law provides the remedy; and already, as the noble lord[1] has stated, an appeal has been made to that law. The matter is, at this moment, *sub judice* and undetermined, and it is a monstrous thing that, in such a state of circumstances, gentlemen of the highest character and of the most unsullied honour should be attacked as they have been in this House and in the newspapers in anticipation of the judgment of the court, and on the audacious assumption that they have been guilty of fraudulent practices and a base conspiracy for their own pecuniary advantage.

Looking at the subject from the lowest point of view, the House will remember that it is the principle of our law that no man, or body of men, shall be presumed to be criminal until his or their criminality be proved, and of such proof no shred or semblance has been offered to affect, in the smallest measure, the Fathers of the Oratory. So it is, also, with reference to the other communities which this motion aims to damage and disturb. As to them, no case has been made requiring a reply, or justifying a demand for Parliamentary inquiry. Finally, I shall only say, with reference to the allusions made to my own country, that, if there be anything which, more than another, mitigates the suffering and relieves the depression of multitudes of its poor and struggling but moral and devout people, we find it in the existence of religious communities, such as are here daringly and wantonly assailed, whose members labour with heroic devotedness, which has

[1] Lord E. Howard.

no taint of selfishness, and involves the voluntary sacrifice of all worldly aims, for the consolation of sorrow, the instruction of ignorance, and the relief of destitution. The Catholics of Ireland regard them with deep attachment and reverential gratitude; and I hope the day may never come when the House of Commons will pronounce their condemnation on such poor pretences as have been urged to-night, and in the absence of all evidence against them.

The following reference to this speech occurs in the 'Illustrated London News' of April 16, 1864 :—

'Mr. O'Hagan has, during the short time he has been in the House, established for himself such a character for gentleness of demeanour, tact, and good sense, and, above all, has exhibited such an un-Irish equanimity of temper, that one was surprised to find him rise with such warmth and a spirit natural to the occasion to rebuke attacks which, if not wanton, were sweeping and almost exceeding the limits of Parliamentary licence.

'It is only due to him to add that in "the very whirlwind" of his indignant remonstrance he preserved "a certain smoothness," and showed that, if his better feelings were roused, he was not under the influence of mere temper.'

A SPEECH DELIVERED IN THE HOUSE OF LORDS, MARCH 13, 1873, ON THE MOTION FOR SECOND READING OF THE DECEASED WIFE'S SISTER BILL.

INTRODUCTORY NOTE.

It is unnecessary to say anything by way of introduction to this speech beyond mentioning that it was delivered on March 13, 1873, on the motion for the second reading of the Bill to legalise marriage with a deceased wife's sister—a question coming up almost annually for discussion in Parliament. On this occasion Lord Houghton introduced the Bill, and it was supported, amongst others, by Lord Stanley of Alderley, Lord Lifford, and Lord Kimberley, and was opposed by the Lord Chancellor (Lord Selborne), Lord Beauchamp, and the Bishop of Oxford. The Bill was negatived by 74 to 49—a considerably increased majority against it compared with those of former years. The main arguments adduced in its favour were the usual ones, that such marriages are extensively desired and that they are not forbidden by the Mosaic Law.

SPEECH.

My Lords,—If the operation of the Bill, submitted for the approval of your lordships, had been confined to England or to Great Britain, I should have preferred to give a silent vote on this occasion. I cannot pretend to understand the moral condition or the social exigencies of this great country as well as those whom I address, and I should have been content to listen to the teachings of their larger experience and more accurate knowledge. But the Bill extends to

Ireland, with which I am better acquainted,—which has not asked for it, and does not want it,—and where, I am satisfied, the majority of the people dislike its principle, and would repel its operation. I have formed a strong opinion on the question, and I desire to express it briefly.

In common with my noble friend[1] who originated this discussion, in a very temperate and graceful speech, I have the sincerest sympathy with any innocent persons who suffer from the law as it exists. From some of them I have received communications which have touched me deeply. But I cannot pity those by whom that law has been deliberately violated, on the prompting of passion or in concession to a supposed expediency,—without consideration of the fatal results to trusting women and unborn children. If it were possible to relieve in cases of real hardship, with due regard to the momentous issues involved in the controversy, I suppose we should all be glad to aid in doing so; but we have to consider what is right and wise, and for the highest interests of the society in which we live. We cannot play with those interests according to the impulse of our feelings. We are bound to deal with them as judgment and conscience dictate when we come to touch that family life which is the very corner-stone of our social state, and, according to its moral condition, becomes the glory or the shame, the strength or the destruction of a people.

The noble lord who moved the second reading sought to overbear us by the weight of precedent, and made many references to Germany, Canada, and the United States. It was a dangerous argument, and, well considered, does not assist my noble friend; for, assuredly authority is against him. The promoters of this Bill are encountered by the harmonious teaching of the Christian Church, and the un-

[1] Lord Houghton.

broken tradition of the Christian people, since Christianity first arose into existence. I do not enter on the Scriptural dispute, or deal with the famous passages of Leviticus as establishing an irrefragable dogma. I look to the vital principle and sure foundation of Christian marriage, declared at the birthtime of the human race, and consecrated by the affirmation of the Redeemer, that the husband and wife are 'one flesh,' bound together in a perfect and holy union, and each absolutely belonging to the other, with a complete identity of love, hope, interest, and life. The great contemplative poet of our age has put it thus :—

> Wedded love with loyal Christians,
> Lady, is a mystery rare ;
> Body, heart, and mind in union,
> Make one being of a pair !

And from that old conception of the marital relations has always been deduced the inference, that the kinship of the wife should be held to be the kinship of the husband ; and that the wife's sister should not be the husband's wife.

This principle has, unquestionably, been maintained at all times since the earliest days of Christianity. It was proclaimed in the Apostolic Constitutions before the Nicene Council. It became a part of that great system of jurisprudence which was generated when the Christian Civilisation rose on the ruins of the effete and corrupt Imperialism of Rome ; basing the hope of the world on the strictness and continency of the family relations, and raising up woman from her low estate, to soften and to purify the rude society around her. The Theodosian Code condemned the practice which we are asked to approve, and declared marriage with a deceased wife's sister to be unlawful. And thenceforth, for many a century, down even to our own time,

the doctrine of that code has been held intact by famous theologians and solemn councils. It was the doctrine of Basil, and Ambrose, and Augustine. It was the doctrine equally of the East and the West. It was affirmed by ecclesiastical assemblages in the various countries of Christendom, as they were successively comprehended within the fold of the Church; and it commanded the assent of all of them. The dispensing power claimed by the Popes was, at first, resisted and denied on the ground that the prohibition was absolute and mandatory by the law of God. And when that power was at length established, it continued emphatically to bear witness to the inherent impropriety of a practice which was permitted only in the most special circumstances, for the gravest causes, and to prevent worse results. So it remains at this hour; for although, in the Roman Catholic Church, dispensations are obtained, they are got with difficulty, and because of plainly coercive exigency. This Bill has nothing to do with marriages so allowed. It gives universal licence; and the memorial of the Catholic Clergy, to which reference has been made, praying only for the legalisation of such unions when authorised by special permission, in no degree involves the approval of its principle.

The Greek Church, whatever may have been its decadence and shortcoming, is a venerable witness to the discipline of Christian antiquity; and in it marriages of this sort are deemed to be incestuous and incapable of being validated at all.

If we pass from ancient times, and come down to the Protestant Confessions of later days, we find that the unlawfulness of such a marriage was asserted equally by Lutherans and Calvinists, in Scotland, in Geneva, and in France; whilst in the Church of England it has been consistently proclaimed.

Then, the fact relied on by the advocates of the measure, that, on the continent of Europe, such marriages are allowed in many countries, comes rather in aid of the argument against them; for in most of those cases they can be legalised only by special dispensation. The Commissioners who reported on the question in 1848 put the matter thus: 'Protestant States on the continent of Europe, with the exception of some Cantons of Switzerland, permit these marriages to be solemnised by dispensation or licence, under ecclesiastical or civil authority.' (Report, p. vi.) *Exceptio probat regulam.* The need of dispensation shows that the act is disapproved.

It may be otherwise in some parts of Germany and America, to which my noble friend so confidently referred; but the result of the abrogation of the old Christian discipline in those countries is surely such a state of things as should deter instead of attracting us, and furnish a solemn warning rather than an inducement to imitation. We cannot approve of indiscriminate connections, lightly formed and dissolved as lightly, on the first gust of temper or the firs assault of ungoverned passion, which it is a mockery to dignify by the sacred name of marriage.

Therefore, my lords, on the issue of authority raised by my noble friend, we have the testimony of the Christian world from the earliest times against this innovation, and, for my own part, I should require the most potent reasons to overbear that testimony—

'Securus judicat orbis terrarum.'

We are the 'heirs of all the ages,' and we should not lightly set aside the instruction which they give.

If you would maintain a Christian civilisation in the world, hold high the ideal of the Christian marriage. Do

not abase its dignity;—do not dim its brightness. The time is not apt for meddling rudely with that great ideal, or, as you are asked to do to-night, with principles which are its bulwarks, and from which it derives its beauty and its strength. Old landmarks are vanishing away. Doctrines of international law and political justice, which long governed the public conscience of mankind, are losing their power. The elements of socialistic anarchy are working through the nations; and we should beware of precipitating the time when laxness as to the marriage bond may help to bring us to the condition of Rome, as described by Gibbon, 'when marriages were without affection, and love was without delicacy or respect;' and when corruption, in that regard, was one of the worst instruments in the overthrow of the mightiest of empires.

But, my lords, if all I have said were to be disregarded; if there were no tradition, or authority, or religious influence to warrant the rejection of this Bill; I should still oppose it in the interest of society, and for the maintenance of the dignity and purity of the family life. I should oppose it, because it is calculated to alter the relations of the sexes in a way most serious and most mischievous. The connection of the brother and the sister is delicate and tender, and so ought to be that of the brother-in-law and the sister-in-law—a connection of love and trust and mutual helpfulness, without the taint of passion or irregular desire. And thus it will continue, if you refuse to make legal marriage possible between them. Temptation is bred of opportunity, and dies when it is lost.

Give the prospect of the marital union which this measure would validate to a household now peaceful and harmonious, and are you sure that the husband will remain free from evil thoughts and wrongful aspirations which he never before indulged? May not the dying wife

find her long hours of pain made doubly miserable, when she feels herself tortured by jealous thoughts of the probable relations of her husband and her sister commencing in her lifetime and in her presence, and to be consummated as soon as the grave has shut her from their sight? And for the maiden sister, would she not be precluded in the circumstances this measure would create,—just in proportion to her delicacy and gentleness and modest fear of misconstruction—from entering a home where she might be a 'ministering angel?' And if she should, notwithstanding, enter it —resolved to exhibit the unselfish devotion and heroic self-sacrifice which so ennoble the nature and the life of woman,—would there be no cause for fear lest she should sometimes be distracted by the bewildering and corrupting thought, that it might be her lot, by the licence of the law, to mount as a nuptial couch the bed on which her sister, in her agony, had awaited dissolution?

I repeat, if there were no question of religious policy or authoritative teaching in the matter, for social reasons only we should be earnest in our resistance to this Bill. And why should we ignore the wisdom of the past and imperil the hopes of the future by adopting such a measure? Three reasons mainly seem to me to have been suggested in the course of this debate for the adoption of it.

It is said that we have no right to limit the freedom of action in matters like this, if not absolutely immoral and forbidden under any circumstances and with any sanction. But are those who argue so prepared to press their contention to its consequences? Will they do away with all prohibitions on the score of affinity, and deny to the State the right of imposing any? Will they refuse to the wife the privilege of marriage with the brother of her husband whilst he obtains licence to marry with her sister? Will they tell those who urge that polygamy is lawful, and cite

the authority of Milton to sustain their opinion, that the law must not interfere, and passion shall have its way? They cannot, and they will not. The Legislature must have power to regulate, more or less, the conduct of the people for their moral good.

Then, it is said, that, because so many suffer from the present restriction upon marriage, it ought to be abrogated. A bold argument, involving an evil consequence,—if deliberate lawbreakers are to be encouraged to trample down the restraints to which they are bound to submit, succeeding all the more by reason of the audacity of their defiance of those restraints, and of the very flagrancy and frequency of their offences.

And, finally, it is said that this is a poor man's question. I doubt it much. I am assured by those who know England well that the persistent agitation of it, for so many years, has been maintained not by the poor but by the rich, who have an interest in it as leading to the condonation of their own illegality in the past, and not as securing a social improvement in the future. And I do not know that the poor man does not need to be guarded from doing what is evil,—dangerous to himself and injurious to his family,—as much as the rich. Nor do I believe that there is any necessity upon him to act against the policy of the law. In my own country, where such marriages are practically almost unknown, the poor feel no need of them, and no desire to enter into them.

And this observation brings me back to Ireland, which, I repeat, in my opinion, does not want this measure, and should not be forced to have it. We have been, so far, I thank God, saved from the infliction of a Divorce Court such as you have in England. I do not believe that any class or denomination of Irishmen desire such a law, with its long train of temptations, evil examples, and inevitable

corruptions; and yet I fear that this Bill, if successful, would surely be its herald. In these matters we, Irishmen, desire to be let alone. We have had much to endure. We have had penury and persecution; we have been cursed by intestine dissension and disgraced by social outrage; but, through all chance and change, we have preserved very rich possessions in the sacredness of the Irish hearth and the purity of Irish womanhood. And from these we shall not willingly be parted. Better times have come; material progress carries us onward; civil strife passes away; and equal laws establish the reign of justice. But we will not abandon, in our happier day, these precious things which we have inherited from the struggles of the past. I fear that measures such as this must bring them into peril, and, therefore, I oppose it.

I grieve that my conclusion is not in accordance with the views of most of those with whom it is my good fortune to act politically in this House; but I cannot falsify my own convictions, and I am coerced to vote against this Bill.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, JUNE 30, 1873, *ON THE MOTION FOR THE SECOND READING OF A BILL 'FOR THE BETTER GOVERNMENT OF IRELAND.'*

INTRODUCTORY NOTE.

On June 9, 1873, Earl Russell laid a Bill on the table of the House of Lords 'for the better government of Ireland.' After some discussion, it was read a first time, and on June 30 he moved the second reading. The Bill was the outcome of a belief which Lord Russell entertained and expressed, that the disclosures in the then recent trial of Cardinal Cullen against the Rev. Mr. O'Keeffe, and the action of the Commissioners of National Education in removing Mr. O'Keeffe from the managership of the national schools in Callan, in consequence of his suspension by his bishop. clearly showed 'that the Government of Ireland was conducted entirely according to the orders and inspiration of the Roman Catholic Church.'

He therefore proposed to declare 'that no pope or any other foreign sovereign had any jurisdiction in these realms;' and he recommended, as a means of bringing about an improvement in the government of the country, that the office of Lord-Lieutenant should be abolished and a Secretary of State for Ireland substituted. With regard to education, he suggested that the decisions of the commissioners—of whom he spoke most disparagingly—should be liable to reversal by the Committee of Council in England. The motion was negatived without a division.

SPEECH.

My Lords,—I am sure your lordships will forgive me for trespassing briefly on your attention, when you remember that I am one of the Commissioners of National Education in Ireland. I should feel myself unworthy of my position in this House, and unfaithful to my colleagues who have been so vehemently, and, in my judgment, so unwarrantably, condemned by the noble earl,[1] if I did not offer some words in vindication of their conduct. But, before I do so, I must shortly advert to the speech which has just been delivered by the noble earl on the cross bench.[2] I do not deem it necessary, especially after the observations of my noble friend,[3] to enter on any discussion as to the general state of Ireland; but I am bound to say that, coming recently from that country, and having some knowledge of its actual condition, I have heard the statement of the noble earl with the utmost surprise. That condition is not, in many respects, such as it ought to be; but I deny that it is greatly worse, or worse at all, than it was five years ago. Nay more, I believe that it is better. I believe that the Irish people are advancing rapidly in the path of material progress. They are increasing in wealth and the comforts which it brings. They have gained a stake in the soil from that wise policy so much denounced to-night, which, according to all our experience of humanity, will give them

[1] Earl Russell. [2] Earl Grey. [3] Earl Kimberley.

an interest in social order and make them a law-abiding and loyal community. Popular education under an admirable system which, on the one hand, secures their religous rights, and, on the other, receives the liberal assistance and the wholesome inspection of the State, is spreading intelligence to every corner of the island; and if your lordships will only consult our judicial statistics, you will find that Ireland, relatively to her population, is at this moment the most crimeless country of the world. These things should be taken into account when noble lords are inclined to indulge in excessive lamentation as to the results of recent measures, which can only find, in the lapse of years, their true and full development. I have been astonished to hear the noble earl institute a comparison between Scotland, as described by Fletcher of Saltoun, and the Ireland of the present day.

Earl Russell: No, no!

Lord O'Hagan: The noble earl referred to the progress of Scotland from a miserable condition, as giving, at the time in which we live, hope of a similar progress for the Irish people. There is no analogy between the cases. If I remember rightly, Fletcher of Saltoun actually proposed the introduction of slavery into Scotland as a means of rescue from her semi-barbarous state. Ireland needs no such assistance to advance her civilisation. On another matter I must say a word. The noble earl has spoken of Irish judges as having given expression to terrible opinions, with reference, as I understood him, to the temporal power of the Pope within these realms. On behalf of those Judges I repel the imputation. It is founded altogether in error and misconception. There has been lately a discussion in the Irish Court of Queen's Bench as to a statute of Elizabeth, affecting the validity of Papal Rescripts in these countries. The Judges differed—three of them

holding that that statute was still in force, and the fourth, as I believe, that for certain purposes, and within certain limits, the course of modern legislation must be held to have impliedly repealed it. But it never entered into his contemplation, or that of any of his brethren, to imagine that, however the spiritual power of the Pontiff might affect the subjects of the realm, submitting to it of their own free will and unfettered conscience, it could interfere, in the smallest measure, with the sovereignty of the Queen. For many a year the Catholics of Ireland, clerical and lay, have repudiated and denied any temporal or civil jurisdiction of the Pope within these kingdoms; and there is no Judge on the Irish Bench who has not pledged his oath to that repudiation and denial. Parliament has wisely dispensed with official swearing, which was felt to be useless and an insult to those of whom it was required. And the attempt of the noble earl to induce your lordships to pass a declaratory Act is wholly unnecessary, as its success would be mischievous. You declare the law only when it is questionable. But here there is no doubt; and the declaration would be worse than idle. Why should you offend the Catholics of Ireland by making such a declaration? Apropos of what will you make it? How has their conduct rendered it necessary? How have they demonstrated any doubt of the plenary jurisdiction of Her Majesty in all matters temporal? How have they indicated forgetfulness of the multiplied oaths by which they have denied, in such matters, the jurisdiction of the Pope? The noble earl once before unhappily initiated legislation of this description. For his purposes, the Ecclesiastical Titles Act was a dead letter, until it ceased to cumber the Statute Book; but it has had, and to this hour it has, most evil operation in severing socially the chief ministers of the religion of the masses of Ireland from the Executive Government, and depriving them

of legitimate influence which might be often used for the most beneficial purposes.

One word only as to the Lord-Lieutenancy. I am not of those who desire its abolition. I know that my opinion is, among politicians, unpopular; but I cannot cease to hold it, because I do not desire to increase the evils which Ireland has endured from excessive centralisation; and because I believe that a strong executive is, and will be for many a day, most needful in her metropolis. I do not think that her interests can, without such an executive, be as well looked after from a parlour in Whitehall. The noble earl once succeeded in carrying a measure for the abolition of the Vice-royalty through the House of Commons; but in this House it was encountered by the prescient wisdom of the Duke of Wellington, and it was rejected by your lordships. Subsequent events have justified your decision. When the cattle-plague raged in England, and threatened devastation to Ireland, it was repelled from our shores by the instant action and unwearying vigilance of my noble friend behind me,[1] who was then Lord-Lieutenant. When Fenianism disturbed the kingdom, it was struck down by a like action and a like vigilance. And I more than doubt whether, in either of those cases, the same results would have been achieved by a Minister in London, without similar means of gauging opinion, of collecting information, and of guarding, with prompt decision, the great interests committed to his care.

I have paused too long on topics on which I did not mean to dwell; and I pass to that which prompted me to address the House. The suggestion of the noble earl as to the education of Ireland is, that the control of it shall be transferred to the Lords of the Council in England. I take leave to say, with all respect, that a proposal more uncalled for,

[1] Earl Kimberley.

more incapable of practical operation or more gratuitously offensive in its character, has never been presented to your lordships. It is not called for by the people whom it would affect. It could not work if it were adopted, for it would relegate to the English Committee of Council appeals against the acts of tens of thousands of patrons, managers and teachers, and of the Board of Education itself. And it conveys the gross imputation of incapacity on a Commission which has established, with earnest effort and unexampled success, a great national system, vast in its proportions and beneficent in its results, and never so flourishing as at this moment. I do not think that such a suggestion needs much discussion ; but I refer to it because it is connected with the charges of the noble earl against the National Board. I trust your lordships will bear with me when I tell you that not here only, but in a work printed for general circulation by the noble earl, the majority of its Commissioners have been assailed with the greatest violence. Reckless accusations have been scattered broadcast against us—the worst figments of the newspapers have been gathered together and embalmed in that curious work. We have been charged with 'grievous wrong'; with 'violation of the spirit of Magna Charta'; with 'allowing an Irish Archbishop to proclaim the jurisdiction of the Pope, a foreign prince, over the Queen's kingdom of Ireland'; and, finally, with 'violation of Divine and human law.'

These are grave charges, which should not have been lightly made against the meanest people in the community; but they have been launched without a shadow of justification against the foremost men in Ireland—its Chief Judges, members of your lordships' House, and others eminent in various walks of life, who are engaged in a difficult and thankless task—without fee or reward, with great expenditure of time and labour, and often at the cost of obloquy

from conflicting parties, maintaining a scheme of liberal and impartial education, which under their auspices has had signal and ever-increasing prosperity. And they have been made by the noble earl not in the excitement of debate, or amidst the ringing cheers of your lordships, but deliberately in the quiet of his study. In such a case, surely, excessive strength of language becomes excessive weakness. As to the matter of Mr. O'Keeffe, only seven out of twenty Commissioners have adopted the views of the noble earl, and on the inquiry lately instituted by the House of Commons no single person ventured to impeach, as he has done, or to impeach at all, the motives of the majority. The Commissioners have simply done their duty, according to their convictions, with absolute freedom from all external influence, and in strict accordance with the precedents and practice which have governed their conduct for forty years. If the imputations now made be well founded, they affect, equally, great and good men who have departed. Archbishops Murray and Whately, Baron Greene, and their co-labourers in earlier days—who marked out the course which their successors have faithfully followed—if they were living, would all protest against the slanderous injustice with which those successors have been assailed. Who, my lords, are the Commissioners represented as subservient to the Pope and disloyal to the Queen? The staunchest Protestants and Presbyterians in Ireland—a learned judge who has been the trusted adviser of the Protestant Prelacy in rehabilitating the Disestablished Church—noble lords, the purity of whose Protestantism even the noble earl will not venture to question—and the trusted representatives of the Irish Presbyterian clergy and laity. The charge is simply—I say it with all respect—absurd; and is it less absurd to say that such men as the Lord Chief Justice of the Common Pleas, the Lord Chief Baron, and Mr. Justice Fitzgerald—

certainly not the least honoured members of the Irish Judicial Bench—have violated Magna Charta and trampled on Divine and human law? For myself, and on behalf of those distinguished persons, I enter my humble protest against the use of language so outrageous; and I have a right to utter that protest, as, for fifteen years, I have laboured earnestly to sustain our system of national education in its integrity—sometimes in opposition to friends whom I esteem, and sometimes with unpleasant exposure to misconception and misrepresentation.

I can speak with some authority as to the conduct and motives of those with whom it is my pride to have been associated in this great work. But they need not stand for defence only on their position and reputation. Their conduct in the matter for which the noble earl has abused them has been in strict accordance with precedent and practice, and the purpose regulating that conduct has been perfectly sound. When Lord Derby wrote his famous letter—which, in itself and its consequences, will be one of his highest titles to the respect of posterity—he proposed that Ireland should enjoy a united secular and a separate religious education. He did not design to eliminate religion from the instruction of the people; and the Commissioners—acting in the large and liberal spirit of that letter—set themselves to avoid the lamentable failures of the Charter Schools and the Kildare Place Society by conciliating and comprehending the clergy of the various denominations; and, very much through their instrumentality, popularising the novel system which was to be substituted for those abortive institutions. They have done so with perfect fairness and impartiality, and they have conquered difficulty, and removed obstruction of no common kind, until that system has attained its present great proportions and pervaded Ireland from the centre to the

sea. And pursuing this course, they tacitly pledged themselves to all denominations—Protestant, Presbyterian, and Roman Catholic alike—that those having the control of the schools should be of such a character as to make their management safe for the children of the several creeds in a religious point of view. And hence it came to pass that, to a very large extent, the clergy of the various Churches assumed the direction of the schools, not from any absolute legal right, but because they were, for manifest reasons, the fittest persons to inspire the people with confidence in the instruction offered to them, and make them regard that instruction as sound and satisfactory. And hence, also, the parson, the priest, or the minister, who was so chosen, by reason of his peculiar position, has always been displaced when that position was lost, on his degradation or suspension by the authorities of his Church. This has been the practice uniformly and universally; and this the principle on which the practice has been founded. It was a practice essential to be maintained in a country all of whose people, whatever be the variances in their forms of belief, are, in their several ways, essentially religious. It gave the guarantee relied on by the heads of the religious bodies, and the system could not have succeeded or endured if that practice had not been honestly maintained. This was the simple ground of all the proceedings in the O'Keeffe case. They were taken at the bidding of no ecclesiastic, and they would have been exactly the same whatever had been the confession of the clergyman—Presbyterian, Baptist, or any other—who had been degraded. If they had been other than they were, in my opinion they would have exposed the Commissioners to the charge of a breach of faith; they would have shaken the system to its foundation, and perilled all the advantages it has conferred on Ireland, and, through the education of Ireland's masses, on the

entire empire. There may be controversy about the propriety of the practice; suggestions may be made as to attempts at its improvement hereafter, with full notice to all the world; but, as matters stood, the Commissioners were bound to enforce it as they found it, and they did absolutely nothing more. If they had done anything else, they would have destroyed the confidence alike of the Churches and the people, in the protection afforded for the purity of separate religious teaching by authorised clergymen; and the result would possibly have been the secession from the Board of myriads of children and the establishment of inferior schools in no relation with the State, deriving from it no aid and submitting to no inspection. Any one who knows Ireland will not need to be told how gigantic might have been the calamity so inflicted upon her. Very many of those who rail at the Commissioners do not understand that the success of their efforts would establish that very clerical denomination over the Irish schools, which of all things, I take it, they desire to avoid. I do not go into any detail as to the case of Mr. O'Keeffe, because on a former occasion [1] I troubled your lordships with many observations upon it. I have only now been anxious

[1] On July 18, 1872, Lord Harrowby presented a petition from the Rev. Mr. O'Keeffe, praying for redress against the action of his bishop, the papal legate, and the National Education Commissioners, and appealed to Lord O'Hagan for an explanation. In reply Lord O'Hagan declined to enter into the dispute between Mr. O'Keeffe and his ecclesiastical superiors, but, as regarded his removal from the managership of the National Schools, these were the facts: Mr. O'Keeffe had been parish priest of Callan, where there were five national schools, of which solely, by tenure of the office of parish priest, he became manager; a dispute arose between him and the bishop of the diocese, who certified to the Board of Commissioners that Mr. O'Keeffe was suspended and had ceased to be parish priest of Callan. The Board, by a majority, removed Mr. O'Keeffe and substituted the clergyman who had been appointed in his stead. It was the invariable rule of the Board so to act; the practice was founded on the view that the clergyman did not become manager in his individual capacity but in right of his office. Amongst the Protestant members of the Board who entirely approved of the

–the occasion having arisen—to defend my colleagues against charges which could never have been made if their own high character, or the settled practice of the National Board, or the plain principle by which it is justified, had been duly regarded. I desire no conflict with the noble earl. I lament some of the courses of his later life, but I have a grateful memory of the services which he rendered, in other days, to the good old cause of civil and religious liberty. I know how often he contended for that cause, and how of him and the Catholics of Ireland it may be said, that for it

> In many a glorious and well-foughten field,
> They stood together in their chivalry!

I have sought only to vindicate those he has mistakenly assailed; and I trust your lordships will, at least, believe they have striven to do their duty.

course taken were his Grace the Duke of Leinster, Dr. Henry, President of Queen's College, Belfast, Lord Monck, Mr. James Gibson, Q.C., Judge Longfield, and Sir Alexander McDonnell.

Father O'Keefe died some years ago—a little before his death he was reconciled to his ecclesiastical superiors—after having publicly expressed his regret for whatever scandal he had caused.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, JUNE 11, 1874, *IN SUPPORT OF A MOTION FOR THE REPEAL OF THE PROVISIONS IN THE JUDICATURE ACT* (1873) *ABOLISHING THE APPELLATE JURISDICTION OF THE HOUSE OF LORDS.*

INTRODUCTORY NOTE.

The ancient appellate jurisdiction exercised by the House of Lords was, in course of time, by tacit consent, delegated to those peers who had held high judicial office; but, as the attendance of the law lords on the hearing of appeals was quite voluntary and their number was small (there have been times when there was only one), it often happened that the highest court of appeal was left without sufficient judges to form a House, in which case either the business was postponed or some non-legal peers sat as members of the Court without affecting to take any part in its decisions. The Parliamentary session, too, only lasted from the month of February to the month of August, and no appeal could be heard save during that interval, while the ordinary legal tribunals of the country sat for the disposal of business from the month of November till the month of August.

The existence of these anomalies and the delay in the transaction of business arising from them led to various suggestions being made from time to time for the reformation of the system, and various abortive efforts to carry some of these suggestions into effect by legislation.

At length, on February 13, 1873, Lord Selborne—the Lord Chancellor—introduced a Bill having for its objects (1) to unite into one Court, to be called the High Court of Justice, all the then existing superior courts of law and equity in England, and to fuse the principles of law and equity in the administration of justice in those courts; and (2) to abolish the appellate jurisdiction of the House of Lords and of the Privy Council in English cases, and to create one court of appeal for England, to be called 'Her Majesty's Court of Appeal,' and to transfer to such court the appellate jurisdiction of the House of Lords and of the Privy Council. Then followed an explanation of how the court was to be constituted.

The Bill passed through the House of Lords, but not without protests from several peers against the abolition of the appellate

jurisdiction of the House. In the House of Commons it was met, on the motion for its second reading, by an amendment—'That it was inexpedient to abolish the appellate jurisdiction of the House of Lords;' but after a debate this amendment was withdrawn, and the Bill was read a second and third time and became law. The effect of this enactment was to abolish the jurisdiction of the House of Lords as a Court of final appeal for England, leaving it still the ultimate appellate tribunal for Ireland and Scotland. Such a result appeared so unsatisfactory that, in a very full meeting of the Irish Bar, it was unanimously resolved (1) that it was desirable that the House of Lords should, if possible, remain the ultimate appellate tribunal for the United Kingdom; (2) that, whatever final court of appeal was constituted, such court should be the same for Ireland as for England, as otherwise there might be a conflict between two final appellate courts. Similar resolutions were adopted by the Bar in Scotland.

In the month of May 1874, Lord Cairns, who, on the Conservative Government coming into office, had succeeded Lord Selborne as Lord Chancellor, introduced a Bill into the House of Lords for the establishment of an intermediate court of appeal for England and the transfer of the appellate jurisdiction of the House of Lords in Irish and Scotch appeals to the same court of final appeal as had been provided for England by the Act of the previous year.

The Bill was read a first and second time without a division; but, on the motion for going into committee, Lord Redesdale moved, 'That, as it is admitted that this House is preferred by Scotland and Ireland as their court of final appeal to any other which has been proposed, and as a satisfactory court of final appeal has not yet been established for England, it will be expedient, instead of proceeding to create a new court for all the three kingdoms, that the provisions of the Supreme Court of Judicature Act of last session, which prohibits appeals to this House, be repealed, and that time be thereby allowed for the adoption of such improvements in the constitution and practice of this House, in the discharge of its judicial functions, as may remove the objections which have been taken to it as a court of judicature, and that the committee on the Supreme Court of Judicature (1873) Amendment Bill be hereby instructed to amend the same in accordance with this resolution.'

Lord O'Hagan supported Lord Redesdale's motion.

SPEECH.

My Lords,—No one can fail to see that the task undertaken by the noble lord [1] whose motion occupies the House is full of difficulty. He seeks to reverse a recent decision of your lordships—which was affirmed by the House of Commons, chiefly because it had been before pronounced by you—relating to a question on which you are more likely to be made adverse to him because it touches your own privileges, and is calculated, perhaps, on that account, to induce a judgment too unfavourable to yourselves.

But, my lords, the question does not regard you only. The loss or gain is not merely personal to you. You hold a trust for the good of the realm, which has come down to you, as a great inheritance, through many generations of wise and famous men. If you can no longer fulfil its obligations with advantage to the administration of justice, you ought, at once, to abandon it; but its voluntary abandonment should, at least, be justified by plain and coercive reasons.

I confess, with my noble and learned friend the Lord Justice Clerk,[2] that I scarcely expected to see this controversy effectively renewed. But it has had a vigorous revival. Public opinion has largely declared itself, in various districts of the empire, for the maintenance of your ancient jurisdiction. The discussion is raised again, in new circumstances and under new conditions, by a member of your lordships' House, who possesses the highest personal and

[1] Lord Redesdale. [2] Lord Moncrieff.

hereditary claims to your most respectful consideration; and I have felt bound to give the matter again my best attention, and to reach, upon its merits, the soundest conclusion I can form.

I have said so much, perhaps unnecessarily, as my noble and learned friend on the woolsack [1] seemed to think, when I last addressed your lordships on this topic, that there was something in the nature of a personal estoppel against my argument, because, having been Lord Chancellor of Ireland under the late Government, I had given, as he said, the weight of my authority to the opposite view.

My lords, I may be allowed to submit, that neither my noble and learned friend the Lord Justice Clerk, nor I, nor the great profession of the Bar in Scotland and Ireland, whose opinions, in this matter, we approve, should be precluded from expressing those opinions by anything which has occurred. The Bill of 1873 touched England only; and Ireland and Scotland were not active in opposing its progress. For myself, I was judicially engaged elsewhere during the brief discussions it encountered, and I took no part in them. I did not vote for it; I was not present at the passing of it; and, in any case, my adverse interference would have been an intrusion, if it had not been, under the circumstances, an impossibility.

I pray your lordships, also, to observe that the Bill now before the House is not the Bill of 1873. The two Bills are entirely different—as has been shown by my noble and learned friend [2] who seconded the motion—in a point which vitally affects the argument on the issue before the House; and you are free to reconsider your former decision, and modify or reverse it, without any impeachment of inconsistency. The Bill of 1873 gave one appeal; the Bill of 1874, I think most properly, has given two.

[1] Lord Cairns. [2] Lord Penzance.

And the accumulation of business, which might have overwhelmed a single appellate court and made the disposal of it by this House very difficult, will be so reduced by the winnowing process of the intermediate tribunal, as to do away with any such difficulty.

And now, Ireland and Scotland urge their common claim not merely to have a Court of Ultimate Appeal the same as that of England, but to induce England to retain her own time-honoured jurisdiction, which they both prefer to any new invention. The Bill is changed, I think essentially, as to the double appeal; and on a measure so altered—on a case urged by those whom, for the first time, it aims to affect, and who, assuredly, have a legitimate right to be heard against it—on a motion made by an English peer, and sustained, as I am told, by a mass of judicial and professional sentiment in England—I feel not only at liberty, but bound, with a free and open mind, to form and to express my honest judgment.

My lords, the jurisdiction which the noble lord asks you to preserve is as old as the constitution, and has ever been held an essential part of it. It has been maintained for many ages, through all the changes of governments and all the revolutions of opinion; and, so far as we have trustworthy evidence, it is at this moment as respected and as popular as at any period since it grew into being with the very foundations of the Common Law.

The description of its characteristics by Lord Coke is as true now as it was three centuries ago. He says: '*Si antiquitatem spectes, est vetustissima; si dignitatem, est honoratissima; si jurisdictionem, est capacissima.*' And, if this be so, may we not fairly ask what is the justification for its overthrow? By what authority has it been denounced? On what inquiry has it been found unworthy of existence? What attempt has been made to correct its

errors and supply its shortcomings, before its condemnation to extinction? The burden of proof is surely on those who assail an institution so venerable in its antiquity and so great in its traditions; and that proof should be strong and clear, to overbear the presumption in its favour which those things create. But I venture to say that no change so momentous was ever proposed on lighter grounds, or accomplished with less deliberation.

Various inquiries have been instituted by your lordships as to your appellate jurisdiction, and not one of them has issued in a recommendation to abolish it. They have all contemplated its reform, and not its destruction. There were such inquiries in 1813 and 1823, on which I need not now bestow attention. But the inquiry of 1856, before a Select Committee of this House—conducted as it was by Peers of the highest ability and distinction, beyond all others qualified to pronounce on such a question, and aided by the testimony of men of remarkable professional experience and attainments—may surely claim the greatest consideration. A committee composed of such persons as Lord Lyndhurst, Lord St. Leonards, Lord Brougham, Lord Cranworth, Lord Campbell, Lord Aberdeen, Lord Lansdowne, Lord Ellenborough, and Lord Elgin has rarely been matched in either House of Parliament. The witnesses were of the highest and most instructed class, such as Lord Westbury, and my friend Sir Joseph Napier, afterwards Lord Chancellor of Ireland; and that committee unanimously expressed their entire concurrence with the general opinion of those witnesses, as to the expediency of retaining the appellate jurisdiction of this House.

It is impossible to imagine a pronouncement of more absolute conclusiveness. Statesmen and judges, among the wisest whom England has produced, united in declaring that there was no need of the change which has since been

wrought. And you are merely asked to affirm their judgment—which no subsequent circumstances have affected, which no subsequent decision has overruled, which, if it was correct in 1856, is equally correct in 1874. The Judicature Commissioners had not the question of your lordships' jurisdiction referred to them; and the Committee of this House, in 1872, on which I had the honour to serve, did not advise extinction of the tribunal, but that it should be supplemented and strengthened by extraneous aid. This was the last inquiry on the subject, and this the last authoritative counsel given to your lordships before you were asked to vote for the change of 1873. So that, if I am not mistaken, the judgment of 1856 remains undisturbed; and there is nothing to bring it into question.

And is it too much to ask that that solemn judgment should not lightly be set at naught? Why should it be? Opinion sometimes unduly causes change. It is sometimes too strong for argument—too masterful for rational resistance. It has its gusts of passion, which obliterate old landmarks, sweep down cherished institutions, and compel reluctant observance of its imperious mandates. But, in this case, opinion and authority go together.

There has been much criticism of the House of Lords as an Appellate Court. Its actual deficiencies have been frequently exposed, and there have been very many and very useful suggestions for its reformation. But I am not aware that England has uttered any outcry against its continuance. I have heard of no popular or professional demand that it should be done away with. My noble and learned friend on the woolsack has read the resolutions of 1873 as indicating the opinion of Ireland; but I must remind him that, in 1874, the Irish Bar have unanimously and repeatedly declared their preference for this House as the final Court of Appeal, and that the representatives of

the Irish solicitors have petitioned your lordships, affirming for themselves that preference. They all recognise the necessity of having the same final Court for the three kingdoms; and they all desire that it may be what it is, and nothing else. In 1873 they did not meddle with the provisions of a measure not immediately affecting them. In 1874 their declarations are strong and unequivocal.

Scotland is of the same opinion. The judges are unanimous; the writers to the signet are unanimous; and, though there appear to be differences elsewhere, my noble and learned friend behind me[1] has demonstrated that the feeling of Scotland is effectively with this motion.

Is, then, the pronounced judgment of two kingdoms to go for nothing? Ought it to receive no respect and command no attention? My noble and learned friend has said that the opinion of the professions is not the opinion of the people, and that this can only be known through their legitimate representatives. But, on a question of this description, who are to determine? By whose judgment should the general sentiment be guided? Surely, the men who alone have opportunity of observing, and have at once a duty and an interest to observe, the conduct of a tribunal, are the true exponents of opinion about it. The masses know nothing, and can know nothing, save through their report; and when they combine for praise or blame on such a subject the multitude ought to follow them. If the working of any judicial institution has their approval, must it not be held of the highest value? The mode of the administration of the law is often as important as the law itself, and when those who administer it secure the confidence of the advocate and the suitor, the tribunals they control are beyond impeachment.

As to the matter before us, the instructed opinion of

[1] Lord Moncrieff.

Ireland and Scotland—and of England also, as I am assured, to a very large extent—whilst it desires reform, protests against destruction; and if the abolition of the judicial functions of this House be permanently accomplished, it will occur, not in response to any public complaint, or in obedience to any public condemnation, or in satisfaction of any public desire, but against the remonstrance and in spite of the opposition of the classes in, at least, two of the three kingdoms who are most qualified to speak, and best entitled to be heard, on a proposal vitally affecting their profession, their country, and themselves.

Well, then, my lords, if the retention of your jurisdiction be approved by the highest authorities in the Law and in the State; if there be no adverse finding by Committee or Commission; if public opinion be in its favour—why should you cast away a privilege which you hold, not so much for your own honour as for the benefit of the nations which beg you to retain it? What assurance have you that the thing to be substituted will be better than the thing to be destroyed? How has it been demonstrated that you cannot combine continuous judicial action, ripe intellect, learning and wide experience, with the prestige and the dignity incommunicably attached to a tribunal so venerable in age and so imposing in authority? What are the conclusive reasons which should compel you to abandon your position in the judicial system of the empire? Why should you precipitate an organic change which will shatter one of the stoutest buttresses of your constitutional power?

Consider for a moment the objections which have been raised against the existing arrangements; and whether, if they be tenable, they are also irremovable? Those objections, as stated by the Committee of 1856, and since repeatedly urged in discussion, represent and rely on the fact, that the attendance of the law lords is uncertain and

fluctuating, the adequate number difficult of maintenance, and the period of the sittings limited by the duration of Parliament.

Beyond doubt the interest of the suitor is primarily to be regarded, and it is the first duty of Parliament to obtain for him the best available tribunal. To this object should be subordinated all considerations of political convenience and class privilege; and if these things cannot be made plainly to concur with the effective administration of justice they must be entirely disregarded.

But the objections seem to me removable, and by the simplest means. The attendance of the law lords is, to some extent, occasional and uncertain, although I believe it was never less so than it has been for a long time past. But the Committee of 1856 and the Committee of 1872 suggested a simple remedy, which should, at least, have been tried before the evil was pronounced incurable. The Committee of 1856 proposed the appointment of Deputy Speakers of the House, who might be judicial persons of the highest class, and who would always, with the Lord Chancellor, constitute a permanent Court, sitting along with the ordinary law lords; the Committee of 1872 gave somewhat similar advice as to the association of salaried judges with the legal members of the House; and either of these suggestions, if successfully carried out, would have met the main difficulty, not existing, but possible to arise, in the actual state of things. Then, as to the cessation of sittings prematurely, the Committee of 1856 recommended that the House should be authorised by a statute to have its Judicial Committees continued in Vacation, and for this recommendation they had the authority of Lord Hale in his book on the Appellate Jurisdiction. No one can doubt the power of Parliament to adopt such a course, and by it that difficulty might have been removed.

But further, we have been told—and this is the most common and popular argument against your lordships' jurisdiction—that it is a 'sham' and an unreality, because the Appellate Tribunal is composed only of legal peers, and not of the majority of your lordships. Precisely the same objection would have applied at any period of your long history. Your predecessors always acted according to the judgment of those who were learned in the law. Lord Hale's treatise demonstrates this in many conclusive passages. He says: 'The judges have been always consulted withal, and their opinions held so sacred, that the lords have ever conformed their judgments thereunto, unless in cases where all the judges were parties to the former judgment, as in the case of ship-money.' And, again, of the judges, he says: 'Their opinions have always been the rules whereby the lords do, and should, proceed in matters of law, especially between party and party.' And he seems to show the way out of the present difficulty by ancient precedent when he speaks of the writ, 'By which a certain select number of the lords with the judges were commissioned by the King to examine, hear, and determine errors in judgments and decisions.' The rules of action indicated in these passages have ever governed the judicial conduct of this House, and it seems to me a mistake to suppose, as was suggested by my noble and learned friend,[1] that the O'Connell case established any new practice, or involved any novel abandonment of jurisdiction. The Appellate Tribunal is as substantial a reality at this moment as it has been at any time since it came into existence, and the suggestions to which I have referred, and which have been repeatedly made without effect, would, if adopted, in my judgment, give it vigour, constancy, and permanence, while preserving the peculiar attributes which have so

[1] Lord Hatherley.

largely won for it the attachment and trust of the community.

The objections we have heard, though formidable in seeming, are not fatal in fact. They may be encountered whilst we stand within the historical lines of the Constitution, adapting ancient principles to modern needs; and they do not warrant the ruin of an institution which, by their removal, we shall be enabled to reform. If it be possible at once to save and to amend, are we not bound to do so?

Can any one doubt the value of uniting the legislative and the judicial functions of your lordships' House? Does not their exercise work a reciprocity of advantage which should not be wantonly relinquished? May not your legislation derive clearness and precision from the trained action of legal minds; and will not those minds be enlarged and enlightened, for the purpose of decision, by contact with the work of statesmanship and familiarity with the great social and political questions which occupy the intelligence of the world? And why should the final judgment in the Court of last resort be deprived, if it be not clearly necessary, of the impressiveness and the respect with which it has been clothed, from connection with the exalted position and the proud memories of this great Assembly?

My lords, you may not be convinced by the arguments which I and those who think with me deem it our duty to submit to you. You may answer—'Jacta alea est;' and your decision may be irreversible. If it be so, I shall strive to hope the best; but I shall lament that decision alike in the interest of justice and of legislation.

The resolution was opposed by Lord Cairns, and on a division was rejected by 52 to 23.

The Bill was read a third time, and was immediately brought down to the House of Commons; but, owing to the lateness of the session and the pressure of other business, it was withdrawn.

In the interval between the prorogation and the reassembling of Parliament in the month of February following a considerable change had taken place in the feelings of the members of both Houses, as well as of the legal profession and the public generally, as to the expediency of abolishing the appellate jurisdiction of the Lords. Public opinion had in fact veered round in favour of its retention. This change of feeling was largely induced by the debate in the House of Lords on June 11, 1874.

In the early part of the year 1875 a memorial of the English Bar, which was signed by nearly four hundred members of that body, was presented to the Lord Chancellor of England, praying that the jurisdiction of the House of Lords as a final court of appeal might be preserved.

Parliament reassembled on February 5, and Lord Cairns re-introduced the Bill, which had been dropped the year before, in substantially the same form as it had been then presented. It passed the first and second reading, although Lord Redesdale and other peers again opposed that portion of it which dealt with the appellate jurisdiction of the House.

The third reading was fixed for March 8; but on that day Lord Cairns announced from his seat on the woolsack that, in consequence of the great change which had taken place in opinion with reference to the expediency of abolishing the appellate jurisdiction of the House of Lords, and the opposition which, he had ascertained, the Bill was to encounter in its further stages, not merely from the Opposition but from his own side of the House, and also from Lord O'Hagan as representing the feeling of Ireland in the matter, and from Lord Moncrieff as representing that of Scotland, he had no hope of passing it into law, and he should therefore most reluctantly and regretfully withdraw it.

On February 25, 1876, Lord Cairns introduced a Bill for the purpose of restoring the appellate jurisdiction of the House of Lords and rendering the administration of it more efficient.

This Bill became an Act of Parliament in August 1876, and for the first time gave legislative sanction to the principle of life judicial peerages.

It will be seen from the foregoing statement that it is to the protests from Ireland and Scotland that the present existence of the House of Lords as an appellate tribunal for the United Kingdom is really due.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, JULY 16, 1874, *IN MOVING THE SECOND READING OF THE MUNICIPAL PRIVILEGES (IRELAND) BILL.*

INTRODUCTORY NOTE.

The object of the Municipal Privileges (Ireland) Bill was to restore to six Irish towns—namely, Dublin, Cork, Limerick, Kilkenny, Waterford, and Drogheda—the power which had been taken away from them in 1840 by the Corporate Reform Act, of appointing their own sheriffs and clerks of the peace, and also of making honorary freemen.

More than twenty towns in England enjoyed this privilege, and the distinction was rendered more invidious by the fact that it was conceded to English corporations elected by household suffrage, while it was withheld from Irish corporations elected on a very high franchise.

The Bill sought to do away with this inequality. It was introduced into the House of Commons by Mr. Isaac Butt, who on April 1, 1874, moved the second reading. The Government expressed their approval of the measure, and it passed this stage. It was then referred to a select committee. The committee, which was presided over by the Chief Secretary for Ireland (Sir M. Hicks-Beach), reported on it favourably, and it was read a third time.

Between the period of its leaving the House of Commons and its introduction into the House of Lords a committee which had been appointed by the Commons to consider the working of the Jury Act of 1871 had issued their report. Certain proposals contained in this report affecting in their consequences the office of sheriff, induced the Government to withdraw their support from the Municipal Bill.

When, therefore, on July 16, Lord O'Hagan, who had charge of the measure in the House of Lords, moved the second reading, and Lord Granville, who supported Lord O'Hagan, called upon the Government to state their views on the subject, the Lord Chancellor (Lord Cairns) recommended as the most satisfactory course that the appointment of sheriffs should be dealt with next session in connection with a Jury Bill.

Lord Carlingford protested against this proposal, the adoption of which, he said, would be equivalent to the rejection of the measure.

After some further discussion the House divided, and the Bill was rejected by 56 to 46.

SPEECH.

My Lords,—When I undertook the conduct of the Bill which I shall ask your lordships to read a second time, I had no reason to believe that I should need to press its proposals by any laboured argument. It purports to assimilate the municipal law of England and of Ireland, and to restore to important institutions, which are common to both countries, an identity of privilege and action which once existed and was unhappily destroyed. If it be accepted by Parliament, it will confer on the corporations of certain counties of cities and counties of towns in Ireland the power of appointing their own sheriffs and clerks of the peace, and bestowing, on persons distinguished by intellectual eminence or public service, the honorary freedom which is in the gift of similar bodies in other districts of the empire. It seeks to restore those rights to six Irish communities only, whilst they are enjoyed by at least twenty of the municipalities of England, many of which are inferior in population and social importance to those in Ireland, which desire and are denied them. Before the Corporate Reform Act, the old corporations possessed those rights, and they were conceded in the first draft of the measure of Lord Melbourne. But when it was introduced, party feeling was strong and fierce. In this and the other House of Parliament there was great excitement on the discussions which attended all its stages. It was bitterly opposed by powerful minorities and heated orators for many troubled years. Its possible mischiefs were enormously exaggerated; its possible benefits

were magnified, perhaps, overmuch; and it was carried at last, as is usual in cases of the kind, at the expense of a compromise, involving, amongst other things, the creation of a civil inequality between England and Ireland on the matters which this Bill submits for the consideration of your lordships. By its provisions, that inequality will be done away with, and the Irish subjects of the Queen will be relieved from the rankling sense of inferiority and injustice which such invidious distinctions are ever calculated to produce when they are established without reason and maintained without necessity.

My lords, a measure having such a worthy purpose is surely entitled to your favourable attention, and its history in the House of Commons ought, in my judgment, to put its acceptance here beyond all controversy. In that House it received the support of Her Majesty's Government. In its principle and its details it was sustained by the Chief Secretary of the Lord-Lieutenant and my right hon. and learned friend the Attorney-General for Ireland. It was settled by a Select Committee, presided over by the Chief Secretary, with the aid of my noble friend[1] his predecessor and many other able and distinguished men; and it comes up to your lordships, having passed the Commons without a division on any one of its clauses. Under such circumstances I might well have supposed that its adoption by your lordships would have been unresisted; but I grieve to find that this is not so. The noble earl opposite means to move its rejection, and, whatever may be the issue of the effort, I cannot but think it had been better spared in the interests of sound policy and the promotion of that kindly feeling and mutual confidence which you should strive to cultivate between the English and the Irish people. I trust your lordships will not countenance an

[1] Lord Hartington.

opposition so unwise in its conception, and so likely to be disastrous in its result. You will not reject a Bill which is recommended by such a weight of authority, unless there be coercive reasons for setting at naught the decision of the Government, confirmed by the sanction of the House of Commons, and applauded by men of all parties in that House, as inaugurating a policy of justice and conciliation. But the case does not rest on authority merely. If there had been no such full consideration and deliberate approval of the measure, I would appeal to your lordships confidently to adopt it on its merits. It asks that you should deal equally with the people of a United Kingdom which will find its connection best consolidated by the extension of common privileges to all within its bounds. And for that great purpose it is surely important that unwarrantable distinctions in the powers and attributes of its municipalities should not be permitted to exist. To nations, such municipalities have always been the kindliest fosterers, and the surest guards, of civil liberty and healthy social progress. In the old Roman times, and in the Middle Age, and equally in the modern world, they have proved themselves the aptest instruments of civilisation—stimulating energy, forming and training opinion, teaching self-respect and self-dependence, and making men recognise the sacredness of public trust and the nobleness of spending themselves in the discharge of public duty.

But I shall not waste more words by speaking further in the abstract on such a subject. I advert to it at all, only for the purpose of saying that if in England, which depends so largely, for her greatness and her freedom, on the old foundations of her system of municipal self-government, it needs to be maintained; in Ireland, the wholesome development of that system is not less desirable. The things of which I have spoken—the creation of a sound opinion, the

nurturing of the spirit of self-dependence, the recognition of the seriousness of public responsibility, sound discipline in the conduct of public affairs—these things are of vast consequence to Ireland, and to aid in the achievement of them all her municipal institutions should be made assistant in the spirit of a large and liberal statesmanship. Whatever may have been the results of legislation heretofore in this direction, we have no reason to despair of their improvement in the future; and that improvement will surely be promoted by a change which, whilst it will enlarge power and increase responsibility, will also knit together more closely the members of the empire by giving them a greater community of action and of interest. Assimilation, my lords, in the laws and customs of these kingdoms is always desirable, when it can properly be attained. Often, it cannot be. And regard must be had to the varying incidents and the changing phases of our social life, when we are required to follow in one country the example of another. There are differences in character, and circumstance, and progress which need to be considered, when we are asked to assimilate; and assimilation, merely for the sake of assimilation, would sometimes be a mischievous mistake. But *primâ facie*, and in the absence of strong reason to the contrary, it is plainly desirable for the general interest; and in the case before your lordships, I pray you to consider that there really is no reason at all for meting a different measure to England and to Ireland. What, in this regard, is good for the one country ought to be good for the other; and if there be ground for denying Ireland the right she demands, on the same ground it should be withdrawn from England.

What suggestion has there been, reasonably justifying the denial? There was none in the House of Commons; there was none before the Select Committee, in the evidence

of the witnesses, which, on the contrary, was all favourable to the claim. There is none in the Report of that Committee. There has been none anywhere, until this moment. The Irish corporations exercise large powers—large powers of taxation and large powers of patronage. They appoint important and highly paid officials, with much authority and control over affairs. They appoint officers whose election clothes them even with judicial functions. And they have appointed those officers fairly and well, and with a proper regard to the efficiency of the public service. Why should they be refused the right of appointment to inferior positions? Why should it be insultingly asserted, in the absence of all proof, that they would misuse that right and pervert it to purposes of personal advantage or public mischief? What ground is there for the slanderous imputation that, in such circumstances, they would act with less integrity or independence than their English neighbours? What pretence is there for believing, that powers which have been exercised for ages without complaint in some of the smallest boroughs in England, cannot be safely entrusted to the great municipalities of Dublin, Cork, or Limerick? And if there be no satisfactory answers to these questions, why should you continue to gall a proud and sensitive people by maintaining an inequality which brands them as inferior to their fellow-men?

My lords, as I have said, I have sought in vain for reasons to justify such a course in the debates of the House of Commons, or the deliberations of the Select Committee on this Bill. I have found them presented only in three or four petitions, which have come from citizens of Dublin and Chambers of Commerce and Conservative Associations in Limerick and Cork. The Chambers are private establishments, without any representative authority, and of the Conservative Associations I know nothing. But the

reasons they allege seem to be mainly two. They say, that a sheriff popularly elected may harm the administration of justice in executing writs and summoning juries improperly, and that the power of making honorary freemen may be used for fraudulent purposes in connection with the corporation. Now as to the sheriffs—in the first place I repudiate the gratuitous assumption, that men fit for the discharge of the duties of the shrievalty would not be chosen in Ireland—men quite as fit as are chosen in England by the corporations of small communities having no sort of claim to superiority over their Irish co-mates. Again, so far as writs and executions are concerned, the sheriff can do no evil for which he is not answerable. And further still, in the greater number of the six towns with which only the Bill is conversant, the evidence before the Select Committee clearly shows that he has little of such business or such responsibility—so little indeed, that Mr. De Moleyns, a Queen's Counsel of the highest character and largest experience—concurring with the testimony of Dr. Hancock, one of the ablest of living statisticians—described their official occupations as 'illusory.' Clearly, on this score, there is no good ground for the objection.

And then, as to the summoning of juries, there are the plainest answers. If by any chance it should appear that there is the slightest danger of a miscarriage in any criminal trial within a limited jurisdiction, the statute law gives to the public prosecutor absolute power of laying the venue in the adjoining county, in which the city sheriff is wholly without influence. But further, under an Act which I had myself the honour of introducing to your Lordships, the Irish sheriffs have no longer any power of selecting jurors; they are merely ministerial officers, and they cannot, by possibility, affect the constitution of the panel. This is the law; and I believe it to be a wise and a beneficent law, which

the opinion of the country will not permit to be reversed. I know the violence of opposition which that salutary Act evoked. I know the denunciations and the scoffings and the fictions which were employed to discredit it; but I believe its principle to be impregnable, and, until it is repealed, the main argument against this Bill has no colour of pretence. Even if the resolutions of the Committee on that statute—the single one of which, really adverse to it, was carried only by a casting vote—should be acted upon by Parliament, the change would not restore the ancient system which gave official power to manufacture juries at discretion, for the Report declares the necessity of securing 'absolute impartiality' in the impanelling of juries, and recommends the use of the ballot in criminal as in civil cases. Therefore, there is nothing in this objection; and when I add that the Bill enables the Lord-Lieutenant to supersede the sheriff if fit occasion should arise, I think I have abundantly disposed of any pretence which can be urged in the apparent interest of the administration of justice. As to the power of making honorary freemen, the objection is too idle to need serious reply. The clause was inserted, because it has been found unpleasant that Irish corporations should be unable to compliment persons of high reputation, or public benefactors, as they are complimented in Scotland and England. It was thought too bad that Sir Garnet Wolseley could not receive in his native land the distinction bestowed by an English municipality, and I do not believe that your lordships will grudge the privilege which would have enabled his compatriots to honour him and gratify themselves. The suggestion of possible fraud is foolish, and the whole matter on this branch of it is too trivial to warrant grave discussion. Indeed, the Bill claims little, and if it passes into a law will not accomplish very much. But it touches equality and justice. It enables

your lordships to do a graceful and a gracious act. It tends to assimilate and identify the institutions of Great Britain and Ireland, and so to consolidate the Union you desire to maintain. I ask you to pause before you reject this Bill, and so disappoint expectations fairly formed and strongly encouraged by the past action of Parliament. You may adopt the measure with perfect safety, and with the great advantage of demonstrating a kindly feeling and a generous confidence, which will not be without appreciation and response. You have a rare opportunity of dignified conciliation and concession. You can conciliate without admission of weakness or risk of injury, and concede without compromise of principle or honour. I move that the Bill be now read a second time.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, JUNE 28, 1878, *ON THE SECOND READING OF THE IRISH INTERMEDIATE EDUCATION BILL.*

INTRODUCTORY NOTE.

THE Conservative Ministry, on coming into office in 1874, showed no inclination to meddle with the difficult question of Irish education which had brought about the overthrow of Mr. Gladstone's administration. In the year 1876 a comprehensive Bill on the subject was introduced into the House of Commons by Mr. Butt, the leader of the Home Rule Party, but it was coldly received by the Government, and was finally withdrawn.

At length, however, the pressure of public opinion impelled Ministers to make an effort themselves to diminish, at least, a national grievance which was universally acknowledged to be real and great.

Accordingly, on June 24, 1878, a Bill was laid upon the table of the House of Lords by the Lord Chancellor (Lord Cairns) having for its object the promotion of intermediate education in Ireland.

The conception of the measure has been justly attributed to Sir Patrick Keenan, the present Resident Commissioner of national education in Ireland, who, having been appointed to inquire into the merits of a controversy affecting education between the authorities of the Catholic Church in the island of Trinidad and the Colonial Government, had recommended in his report a somewhat similar scheme, by way of eluding the religious difficulty—a suggestion which was adopted with the most satisfactory results.

The Bill introduced by Lord Cairns proposed the establishment of a board of commissioners, with two assistant commis-

sioners, to promote intermediate secular education in Ireland (1) by instituting and carrying on a system of public examination of studies; (2) by providing for payment of prizes and exhibitions, and for giving certificates to students; (3) by providing for payment of school-managers who complied with the conditions prescribed in order to obtain the fees dependent on the results of public examinations; (4) by applying the funds placed at the disposal of the Board for purposes of the Act, provided no examination be held in any subject of religious instruction nor any payment made in respect thereof. It was proposed that a million sterling should be voted from the surplus of the Irish Church fund for the carrying out of the measure.

The Bill was read a second time after a long debate on June 28, on which occasion Lord O'Hagan spoke in support of it as follows.

SPEECH.

My Lords,—I desire to offer my most cordial support to this Bill. I thank the Government for introducing it, and I trust it will become law without failure or delay. If I could grudge my noble and learned friend on the woolsack any of the good fortune which has waited on all the stages of his public career, I should be disposed to envy him the privilege of originating a measure which, in itself and in its consequences, promises to be so fraught with blessings to our common country.

It is, necessarily, tentative and imperfect. I could easily suggest improvements in it and useful additions to it; and, of course, its practical results must depend mainly on the character of the Commission to be appointed and the action of that Commission. But I have no reason to think that the fair and reasonable principles which are embodied in its provisions will be forgotten in the arrangements for its administration, and I anticipate that its success will ensure hereafter a proper enlargement of the means for working it, and a wise adaptation of its machinery to the peculiar exigencies of Ireland.

The question at issue far transcends the bounds of party controversy. It concerns the intellectual life of a nation, and touches the highest interests of this great empire. It is, no doubt, of special importance to the Irish people; but its fit solution will have a far wider operation. They have enjoyed, in latter days, a great extension of popular

privileges. The electoral franchise, exercised through the ballot, makes their political conduct, for good or for evil, of the highest importance in the Imperial Parliament; and though we cannot count upon the future, it is not, at least, beyond the limits of belief that they, together with Great Britain, may soon have an enlargement of that franchise.

Under such circumstances, diffused knowledge, creating and regulating sound opinion, grows every day more needful to guide the depositaries of power to beneficial courses. The franchise, in its exercise, may be a blessing or a curse to its possessors; and, to make it a blessing, we must spread amongst them the intelligence which will secure a reasonable use of it. My lords, you have given votes to the masses of Irishmen, and you cannot afford to neglect the intermediate education which is sought by those whose social position enables them, so strongly, to act upon the multitudes around them.

Therefore, from a political point of view, this Bill is eminently entitled to the best consideration of the House. But it is, also, entitled to that consideration on other grounds. The people of Ireland have always been eager for knowledge. In distant centuries, within the period of authentic history, they enjoyed it, perhaps, more fully than any contemporary nation. Through the evil days which succeeded, they have struggled for it bravely in the face of the worst discouragement; and the use they have made of the opportunities of primary instruction which, in these happier times, have been afforded to them is a claim and an encouragement to educational progress of no common kind.

Quick of wit and keenly appreciating the value of those recent opportunities, they have shown, in a marvellous manner, their aptitude for acquirement and their capacity of success, within the limits of the mental training they

have, so far, been permitted to receive. I ask your lordships to give your best attention to the facts and figures I present, on authority beyond all question.

Scotland contains 10½ per cent. of the population of the United Kingdom, England 72½, and Ireland 17 per cent. Since 1871, there were 1,918 places in the Excise and Customs disposed of by public competition. For these places there were 11,371 candidates—11 per cent. Scotch, 46 per cent. English, and 43 per cent. Irish; and, of these, Scotland gained 6 per cent., England 38 per cent., and Ireland 56 per cent. Of every 100 Scotch candidates, 9 passed; of every 100 English candidates, 14 passed; and of every 100 Irish candidates, 22 passed.

My lords, the statement is not mine, or made according to my calculation. I offer it as that of the Executive Government of Ireland, formally pronounced, at the annual dinner of the Lord Mayor of Dublin in February last, by the distinguished nobleman who now represents the Sovereign in that country. It will, probably, astonish you; but it only comes in sequence to a number of such startling narratives made, year after year by successive viceroys, ever since competitive examinations opened a new career to the young men of Ireland. They have uniformly been, in a high degree, honourable to the industry and intellect of her people; and they will not indispose your lordships to aid in opening a new and fruitful field for that industry and intellect, because they make more flagrant and intolerable the want of the higher culture which, to this hour, is denied her.

The Irish boy can distance his competitors in striving for the humbler posts in the public service; but there he must bound ambition and abandon hope. If he wishes to look beyond them, and raise himself by honest effort to a higher position in the world, the way is barred against him.

Almost every lad in Scotland has a classical school within easy reach of his home. A few years since, a fifth of all the students of the University of St. Andrews are said to have been the sons of labourers. Ample endowments, scattered broadcast throughout England, invite her people to progress and to honour. And, accordingly, at home and abroad, the youth so favoured have chances in the world for which the poor Irishman longs in vain, whatever may be his faculties and aspirations. He cannot compete for the offices which are the reward of a more liberal training; and he continues, here and in the Colonies, 'a hewer of wood and drawer of water'—from no natural inferiority, from no social or legal disqualification, but from the lack of that needful knowledge to which the State neglects to help him, and, by its own action, has denied him the means of approach which he formerly enjoyed.

My lords, a million of children are educated in the national schools of Ireland. About the age of 15 they exhaust the sources of instruction which these schools supply; and, if they fully avail themselves of their opportunities, they may be, so far, amongst the best-informed boys in Europe. But from that time forth they are without aid to advancement, though they may find within them the impulses of genius, the love of labour, and the consciousness of being worthy of a better destiny.

When the census was taken in 1871, there was, in all Ireland, of the entire Catholic population, one in 923 learning Latin, and of the Protestant population, one in 259; whilst, of the Catholics, one in 1,209 was learning Greek, and of the Protestants, one in 398. The figures are eloquent. They prove how sad has been the decadence of intermediate education in latter days; and they show, also, that the Catholic majority suffer most from it, and have the deepest interest in a proposal to remove the blight which is

withering up their intellectual force. They suffer from it in every way, but its baleful effect is especially conspicuous in the disproportion between their total number and that which they supply to the various learned professions. I shall not weary your lordships by a detail of the statistics by which this is demonstrated. You will find them abundantly in the report of the Census Commissioners, which proves that, in spite of the destruction of sectarian ascendency, the religious equality, which has been legally established, has not given to the majority of Irishmen the social position they ought to hold in their own land.

My lords, this is not wonderful. The evil is an inevitable inheritance from the past. The history of Ireland contains no blacker page than that which describes the dealings of her rulers with the education of her people; nor any which gives them a stronger claim to redress and reparation from the Imperial Legislature. Down to our own times, every successive act of British statesmanship, which affected their mental and moral training, was designed and administered in the spirit of an intolerant sectarianism, aiming at the propagation of religious tenets which they rejected, and to the adoption of which they could neither be corrupted nor coerced. They were asked to purchase knowledge by the sacrifice of faith. They refused with heroic obstinacy, and they triumphed, after suffering and sacrifice such as have rarely defied the cruelty of persecution, and vindicated the liberty of conscience. Not the desolating wars of Elizabeth; not the ruthless massacres of Cromwell; not the repeated confiscations which spoiled the old possessors of the soil, and made them fugitives in bogs and mountains or homeless wanderers in foreign lands; not the commercial jealousy and high-handed injustice which palsied industry and extinguished manufactures; not these, or the many other destructive influences which for ages

made Ireland miserable, were so calculated to secure her perpetual degradation as the infamous statutes which deliberately attempted to keep in compulsory ignorance four-fifths of her inhabitants, and so trample out her intellectual life, and with it all hope of her social redemption. Under that abominable system a Catholic parent could not instruct his own child, a Catholic teacher could not bring up a Catholic pupil, save under penalties of the most barbarous kind. From all the means of instruction Catholics were shut out; all Catholic education was absolutely prohibited; and it is difficult to conceive how, under such circumstances, the Catholic people did not sink into a state of brutal and hopeless debasement. But they did not. In the darkest days they kept the light of knowledge still glimmering faintly. Their eagerness for it never slackened. They never ceased to struggle for it; and, in the struggle, they were always helped by the Catholic priesthood, and by humble teachers in obscure places who ventured to pursue their noble calling in spite of the inhuman law.

The Act of Henry VIII., which required the establishment of parochial schools, was never really enforced; and, if it had been, would probably have repelled, in its operation, the mass of the community.

The endowed schools, which gave Ulster a special advantage, as they were founded in connection with the plantation of the province, although not legally exclusive of Catholics, were practically so, and were believed to be so until a very recent period. They were of small advantage, admirably as some of them have been recently conducted, in relation to the real necessities of the country.

The Charter schools hoped to evangelise Ireland by appealing to the basest motives and outraging the best feelings of the human heart. They made the relief of

misery conditional on apostasy from the Church which was dear to the people. They took children from parents in the name of religion, and were authorised by the Legislature to render the separation life-long. They flourished for nearly a hundred years. But their monstrous abuses at last brought them to ruin.

Wesley and Howard combined to denounce them: and the latter, in one of the most meritorious acts of his noble life, induced the Irish Parliament to inquire into their condition, describing their pupils as 'sickly, naked, and half-starved,' and the whole system as a deplorable disgrace to Protestantism. That system then got its death-blow; but its hideous existence lingered on to the nineteenth century, and perished at last, leaving an evil memory to the perpetual execration of mankind.

Then came the Kildare Place Society, which laboured in the same direction—with diminished virulence and with equal absence of result—to undermine the ancient faith of Ireland. It also failed: and was succeeded by Lord Derby's proposal for a plan of National Education, which abandoned the hopeless work of proselytism; repudiated the very suspicion of it; and aimed to give the humbler classes separate religious and combined secular instruction.

To that plan there was much and obstinate resistance. It was assailed from the most opposite quarters and on the most inconsistent grounds. But it has gone on, prospering and expanding. It has filled the island with its schools, and borne into every district the means of information. I have indicated to the House the remarkable results of its operation in connection with the Civil Service; and they are manifested in many other ways. But they have not all been beneficial—

—medio de fonte leporum
Surgit amari aliquid.

They have, undoubtedly, tended to destroy multitudes of schools which gave the people the chance of a classical and scientific education. The masters of those schools were maintained by the contributions of the majority of their pupils, who were satisfied with such instruction in English as they could obtain. The minority, who desired a higher culture, only afforded a small supplement to incomes which were very moderate. And when the State drafted away the children of the poor, in tens of thousands, by its liberal subventions to the National Board, the schools which had been kept in a struggling existence were inevitably extinguished.

The evil so wrought has been very grievous, and it is not unreasonable that the Legislature, which—indirectly and unconsciously and with the best intentions—has produced that evil, should be urged to supply a sufficient remedy.

Equally in the south and in the north the old schools have perished. In Kerry, ripe scholars used to be found along its lakes and in the recesses of its mountains. In the noble province where the Lord Chancellor and I first saw the light, Down had modest seminaries which sent many a distinguished man to the legal and clerical professions. Tyrone was called the Kerry of Ulster; and I cannot better inform your lordships as to the change which has been accomplished there and elsewhere, than by citing some words from a memorial presented to the Board of Education by the inhabitants of Newtownstewart, praying that classics and French might be introduced as a branch of the teaching of the National Schools in that town and neighbourhood. Of those schools they observed :—

They have also, your memorialists regret to say, inflicted on the community a most serious loss, by destroying hereabouts, and we believe generally in Ireland, the previously existing

means of Intermediate Education—all that faulty yet not ineffective machinery which opened up to the middle classes, and to the most gifted of the poor, the Colleges, the Professions, and the Public service in general.

And they proceed :—

The Irish people are fairly intelligent, and fairly ambitious of learning. They are very willing to be taught Logic, Political Economy, Christian Evidences, Chemistry, Natural Philosophy, Navigation, and the other branches which, no doubt properly, the Board delights to honour. But then they are mostly poor. They cannot afford to keep their children at school beyond a certain age, except in pursuit of those substantial advantages which hitherto, in Ireland, learning and good conduct have been supposed to bring. If the Board desire that its schools shall be attended by children above the average age of nine or ten, it must allow them to fall in with this natural ambition. It must allow them to be made a step towards those results which the people have been wont to see, and are able to appreciate—such as the Clerical, the Medical, the Legal Professions, and the social status which these bestow.

Is it feared that this is ' only theory ' ; and that in desiring to impart Classics and French we are attempting to ' force ' education on classes unfitted for it or unaccustomed to it ?

In reply, we simply forward *three* lists of names.

(*a*) The *first* is a list of the boys primarily affected by the Board's order, those, namely, who formed the Latin classes in Newtownstewart School, with a statement of their social position and that of their immediate relatives. The Board will observe that, though in humble or struggling circumstances, they are just of that class from which the Professions are in fact recruited, or have been hitherto. Nearly all of them have uncles, full cousins, or elder brothers who have made their way to the Professions.

(*b*) The *second* list contains the names of more than twenty teachers who actually have imparted classical instruction, since the year 1800, in different districts of this parish—in Newtownstewart, Lisnatunny, Douglas, Ardstraw Bridge, Crew Bridge, Dreguish, Magheracriggan, Ergenagh, or Clare—not all simultaneously, but two or three or four at a time, as the wants of the

localities varied. At present, with some twenty-five National Schools in the parish, and several Church Education Schools besides, there is no classical or other superior instruction whatsoever. And we have, moreover, every reason to fear that the little English which is learned in early childhood is, for want of being kept up and carried on, mostly forgotten before the age of puberty.

(*c*) The *third* list represents, in part, the fruit of this old-fashioned instruction: a list, namely, of those natives of the parish who, since the year 1800, have actually reached the Professions. And we say, 'in part,' for our list is most incomplete: more careful inquiries, we are satisfied, would increase it twenty-five per cent. or more. It contains, however, *between three and four hundred names*. And many of these, the Board will observe, not only reached the Professions, but attained to some eminence therein. Our Clerical List contains a Dean of Maynooth and several Protestant Rectors; our Medical List includes three who each won the honours of knighthood. And all this we add, not without some pride, is from a parish whose only resources are agricultural, whose resident gentry are few or none, and where the average size of the farms is under twenty acres of but middling land—of land reclaimed with difficulty from rock, or bog, or mountain.

These are, surely, striking and persuasive statements: and they are applicable widely throughout the Irish counties. Of themselves, are they not abundant to demonstrate the calamitous change which has occurred, and the absolute need of prompt and decisive action to undo its mischiefs and prevent the recurrence of them?

Representations such as I have cited have been pressed repeatedly on the National Board, and have induced it—perhaps without sufficient authority so to dispose of funds provided for primary education—to offer some small result fees to teachers instructing in classics before and after the ordinary school hours. But the utmost which could be given in that way was manifestly inadequate to the exigencies of the case: and I find that, in the last year, only

305 pupils enabled the masters to take advantage of it by passing in Latin, and 90 by passing in Greek.

The Report of the Census Commissioners of 1871, one of the ablest and most instructive official papers ever produced in Ireland, is sadly conclusive as to the lamentable deficiency of intermediate education. My noble and learned friend on the woolsack has already so fully detailed the figures which forced them to proclaim that deficiency in the strongest terms, that I shall not weary the House by repetition of his statement. They declare with deep regret, that all available evidence points, in this grave matter, to rapid retrogression.

No wonder that the intelligence of Ireland has been alarmed by such a state of things. The outcry against it has been unanimous and universal. In 1857 the Endowed Schools Commissioners testified to the anxiety displayed by people of all parties and religions, in every district of the country, for some supply of middle-class instruction, for some assistance to those who were willing and earnest to seek advancement by honest industry and mental cultivation. The commissioners urged compliance with the demand in emphatic language, and suggested the adoption of a scheme, in some of its principles, fully accordant with the Bill before your lordships. But twenty years have gone and their recommendation remains barren of result. Our condition is worse than it was, and year by year it grows more deplorable. We do not move one hour too soon. We cannot afford to wait any longer.

For, my lords, the state of things I have weakly attempted to describe has had its necessary consequences. The intellect of Ireland—I borrow the strong words of the Census Commissioners—has been 'starved and dwarfed.' A moral paralysis has deadened it. The people have ceased, to a large extent, to know or care for a high and wholesome

literature. Bookshops are vanishing from the towns. The publishing trade, which, in the last century, was large and flourishing, is almost extinct. Once, the presses of Dublin teemed with expensive works—encyclopædias, dictionaries, classical and scientific treatises, and others—such as an educated community demands and will procure. But the production of such works has almost ceased. Those who read must look abroad for the means of indulging their intellectual appetite. The excellent editions which enabled Falconer and others, a hundred years ago, to compete with English publishers are to be had no more. And the literary ability of Irishmen, finding scant encouragement at home, is driven to seek distinction and reward in other countries.

There is material progress. The masses of the people are more comfortable than those who went before them. They no longer suffer from chronic destitution; they do not dread the frequent famines of other times. They have an interest in the soil which was denied to their forefathers, and a security in the fruit of their industry which affords them a future full of happy promise.

There is moral progress too. Crime has marvellously diminished. The social warfare, which issued so often in murderous outrage, is waged no longer with the violence of other days. Earnest religious faith penetrates the national spirit; and, in purity of morals, Ireland need acknowledge no superior amongst the countries of the earth. It is sad that a people endowed with such good gifts should have been allowed to pine in mental inactivity. They have not many of the advantages of other nations. They have not the iron or the coal of England, her ships, her manufactures, or her commerce. But they are rich in the faculties of the mind, in keenness of apprehension, and liveliness of wit and facility of acquisition; and in the

cultivation of those faculties they have been conspicuously successful, whenever they have had the opportunity of being so. My lords, I believe that the measure now offered to your lordships will yield them such an opportunity of utilising their dormant powers, and, therefore, I press for the adoption of it without hesitation and without delay.

My lords, I shall not occupy your time by any discussion of the details of the Bill; they have been already lucidly dealt with by the Lord Chancellor. To some of them I might be disposed to object; some of them might, in my opinion, be improved; but the session wears towards its close, and I shrink from the responsibility—by act or suggestion of mine—of putting the Bill in peril. Almost any controversy at such a period might be fatal to it; and I should hold myself criminal if I assisted in postponing or defeating a scheme which promises such benefits to Ireland.

It commends itself to me as an honest effort to supply an unquestionable want in a just and judicious manner. It respects the rights of conscience. It cannot offend the religious sentiment of any reasonable man. It is absolutely impartial in dispensing, with an equal hand, the public bounty amongst the subjects of the realm. It will encourage the enterprise of the teachers, and, in the absence of endowments which at present are unattainable, supply some means for the increase and improvement of scholastic establishments without vexatious meddling in their internal administration. It will stimulate honourable ambition, and give humble merit, striving against adverse circumstances, opportunity of recognition and assistance to success. And to these excellent purposes it dedicates a fund which could not be more fitly applied in making reparation for the evil past and heralding the better future.

My lords, if the fair promises of this Bill be realised, we shall yet see the Irish people, self-reliant and self-

respecting, redeemed by the power of an awakened intelligence. Too many of them have mourned lapsed opportunities and baffled hopes. Generation after generation, too many have passed from childhood to adolescence, and from youth to age, and gone to the grave without the culture which would have enabled them to rise to the level of their own capacities and improve and exalt their country. A brighter day has dawned. A happier prospect opens before them. Legislation like this will rouse them from their mental torpor, and inspire them with courage for the battle of life. The pool of Bethesda was sluggish until the angel stirred it, and a healing grace descended on its waters. The bones were dry and formless in the vision of the prophet, but the spirit moved upon them and they grew to shapes of strength and beauty. And with God's blessing the influence of this measure and those which may succeed it—with as sound a principle and as wise an end—will launch Ireland on a great career, and help her to pursue it with hope and energy.

The Bill made its way through the House of Commons with a rapidity and a unanimity of consent almost unprecedented in a question relating to Ireland. On August 12, 1878, it was read a third time and received the royal assent.

Lord O'Hagan was the first Vice-Chairman of the Board of Commissioners.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, JULY 8, 1879, *ON THE SECOND READING OF THE UNIVERSITY EDUCATION* (*IRELAND*) *BILL.*

INTRODUCTORY NOTE.

It was confidently hoped that the Government which had dealt so successfully with the question of intermediate education in Ireland would be encouraged to offer, in the ensuing session of Parliament, some practical solution of the more perplexing problem of university education, and there was consequently much disappointment when the Chancellor of the Exchequer (Sir Stafford Northcote) announced, on February 17, 1879, that the Ministry had come to the conclusion not to move in the matter. As the session advanced, however, it became known that negotiations upon the subject, which had been initiated in the autumn of 1878, were still proceeding between the Lord-Lieutenant and the Irish episcopacy, and expectations were again raised of a satisfactory settlement of this long-debated question. On May 15 the O'Conor Don introduced into the House of Commons a Bill 'to make better provision for University Education in Ireland.' This measure was understood to have had the sanction of the Catholic bishops, and was almost identical with a scheme which some time before had been submitted for their approval by the Irish Government. It was framed upon the lines of the Intermediate Education Act—the exclusion of all recognition of the religious element—no direct endowment of any existing institution, but indirect endowment through the stimulus afforded to students and colleges by payments founded on the result of examinations. The annual expenses of the proposed system were to be provided for out of the interest of about a million and a quarter sterling drawn from the Irish Church surplus.

The debate on the motion for the second reading was adjourned at the request of the Chancellor of the Exchequer in order that further explanations might be given, and when it was resumed on June 24 the Home Secretary (Mr. Cross) said the Government could not vote for the Bill before the House, as they entertained some strong objections to its principles, but that they had determined to take the matter into their own hands, and that a Bill dealing with the question would immediately be brought into the House of Lords.

On June 30 the Lord Chancellor (Lord Cairns), in introducing this promised Bill, observed that the objection of the Government to the Bill of the O'Conor Don was on the ground that its financial proposals would constitute a denominational endowment, and were not in harmony with the intentions of the Legislature when disendowing the Established Church of Ireland. Under these circumstances, though Ministers might have been content with opposing that measure, they deemed it fairer to Parliament and the country to place a Bill on the table for the remedy of a recognised deficiency. This Bill would make provision for founding and incorporating a university in Ireland to consist of a chancellor and a senate (the latter not to exceed thirty-six in number), and it proposed that the senate should elect its own vice-chancellor and appoint examiners for matriculation and degrees; but it was not intended that there should be any professors connected with the colleges. In this respect the scheme would follow the example of the University of London. Further, as the new university would perform similar functions to those of the Queen's University, it was proposed to dissolve the latter and attach the members and graduates to the new university.

In the debate on the motion for the second reading on Tuesday, July 8, Lord O'Hagan criticised the measure in the following speech.

SPEECH.

My Lords,—Last year, when the Intermediate Education Bill for Ireland was introduced by my noble and learned friend on the woolsack, I had real pleasure in giving it my humble but earnest support. It was the measure of a Government to which I am in opposition, and it was calculated to secure for them much acceptance and approval. But it was just in its principle, impartial in its action, comprehensive and efficient in its machinery, and designed to promote the sound instruction of all the people without annoyance to the religious susceptibilities of any section of them, and I was prompt to express my appreciation of its merits and my gratitude for the great boon which it bestowed. I hoped that I might to-day have welcomed a similar act of wise and benevolent statesmanship, and seen a measure drawn on the same lines and aimed at the same results, *mutatis mutandis,* to which I might have given warm adhesion. It seemed to me that such a measure would have been satisfactory to all reasonable men, and would have largely tended to secure the equality and justice for which the Catholics of Ireland have for many years contended. The precedent was complete—in establishing identical rights amongst the various religious denominations, and giving for the purposes of intermediate education the same aid which would have been effective with proper modification for the maintenance of a university available for the benefit of all. And as the precedent was complete, the time for applying it was auspicious. The Bill introduced into the

Commons, with the full approval of Catholic Ireland, was moderate in its provisions, and presented in the spirit of conciliation, and with a real wish to effect an honourable compromise.

I shall, of course, like the noble earl on the woolsack, avoid any discussion on the details of a measure which is not before this House, but I may be forgiven for repeating the protest uttered by the noble earl[1] on the cross benches against the doctrine which would preclude Parliament from freely applying the surplus of the Irish Church Fund as it may deem best for the public benefit. In my mind it is impossible to imagine an application of Irish money for Irish purposes more legitimate than that which would be made in improving the education of Ireland and so promoting her very highest interests. But surely the action of the last session should make controversy on this point impossible. If it was allowable to give a million of the fund to be spent, *inter alia*, on result fees, confessedly for the assistance of intermediate schools of all denominations, with what sort of consistency can it be said that there would be breach of faith or violation of principle in bestowing as much to be disposed of in the same way for schools supplying a higher culture? There was nothing of sectarian endowment in the first allocation of the money, although Roman Catholics had the benefit of it like other people, and there would be as little in the second. The cases seem to me undistinguishable, and Parliament would be perfectly within its right if it dealt with the second as it wisely and generously dealt with the first. But we have the highest authority against drawing any distinction between them, and for asserting the constitutional power of the Legislature so to dispose of the surplus, whatever may have been the views originally entertained about it. In the

[1] Earl Grey.

debate on the second reading of the O'Conor Don's Bill n the House of Commons, the leader of the house, the Chancellor of the Exchequer, used these words: 'It is free to Parliament to alter the work which had been done by a preceding Parliament, and to vary the disposition of funds which were formerly intended to be appropriated in a certain way,' so that principle, precedent, and authority combined to justify conclusively the proposal of the O'Conor Don in this regard. Altogether it was an honest effort to attain a fair and moderate solution of a difficult question, and if that question be not solved the fault will not rest with the Irish people or the Irish Catholic episcopacy. The reasons for making such an effort and helping it to a happy issue are in my mind irresistibly and clearly confessed by the Bill which has just been presented for your lordships' consideration. Utterly inadequate as I believe it to be to satisfy the essential conditions of the full and lasting settlement of a question of capital importance to Ireland and the empire, it is at least an emphatic testimony to the necessity of somehow reaching such a settlement. Of that necessity the declaration and the acts of statesmen and administrations of every party had already made repeated avowal, placing it fairly beyond dispute. The head of one Government deplored the scandalous condition of Irish university education. The chief of another negotiated as to the terms of a scheme for its improvement. There is almost universal assent that a grievance exists which must have a remedy, and that assent was never more emphatically expressed than by the late speeches of Ministers in another place, and by the admission as inevitably involved in the production of this measure, that, for the masses of the Irish people, the existing institutions do not properly supply the means of higher instruction.

Trinity College is venerable in its antiquity—ample in its endowments, liberal in its spirit, and illustrious in the great men who have passed through its portals. The Queen's Colleges, established by Sir Robert Peel with an honest purpose to serve and satisfy the Irish community, have very able professors, very large funds, and very great attractions for their students in the way of scholastic honours and substantial rewards. But, excellent as these institutions are for all who can use them conscientiously, they have undoubtedly failed to supply the mental requirements of the Catholic people. The great majority of the Irish are Catholics, and in the existing colleges they have no proportionate advantage. It may be said that the Roman Catholic population are poor and backward in intelligence, and less fit or eager for university training than their fellow-subjects of other creeds. Admitting that it may be so, still the disproportion is enormous and unnatural, and the evidence it gives of dissatisfaction with things as they exist is made conclusive by the repeated declarations of thousands of the middle and higher classes of Catholics—peers, magistrates, traders, and landholders—all affirming the necessity of a change, and even more conclusive, if possible, by the abundant contributions of a poor community made year after year for a quarter of a century, until in the aggregate they amount to nearly 200,000*l.*, for the purpose of establishing and supporting a Catholic university. But I need not multiply proofs of the feeling which, rightly or wrongly, pervades this Catholic people.

This Bill, I repeat, is conclusive as to its existence, and conclusive also in demonstrating that means must be adopted, very different from those which it supplies, to remove that feeling by taking away the educational inequality and the educational injustice in which it has originated.

With that feeling you may have little sympathy. You may say it is prompted by submission to authority which you do not respect. You may call it unreasonable or unwise if you will, and blame those who cherish it for foregoing those intellectual advantages which are undoubtedly within their reach merely because they cling to a principle which asserts the paramount necessity of uniting religious with secular instruction. My lords, it does not concern me to maintain the opposite conclusion. It is enough for my argument if the majority of the Queen's Irish subjects are clearly shown to have convictions which, however formed and however estimated by others, disable them from profiting by institutions of the State to which their fellow-members may honestly have access, and gain great benefits without compromise of conscience. In this country they are free to cherish those convictions, and therefore to put them at disadvantage and to subject them to disability because they exercise their unquestionable right to do so, is, in their judgment and in mine, a grievance and a wrong. They claim educational equality and nothing more. Their claim is logical, constitutional, and righteous; and one way or other, at one time or other, by one Parliament or another, it will certainly be allowed. The full concession of that claim may be difficult, not only because of sectarian and party prejudice, which makes men slow to recognise the right of others to think as freely as themselves, but because of the prestige which attaches to old seminaries, the completeness of their machinery and the resulting superiority over competing institutions of shorter standing less well accoutred to fulfil the purpose.

It may be difficult or impossible, for these or other reasons, during many a long year to achieve real educational equality in Ireland; but it behoves the State to promote it by all reasonable means, and, so far as may be, to redress

the balance between those who are content with purely secular instruction and those who are not, and to secure fair play for the latter by such assistance in relieving their desire for good university training as may enable them to maintain at least an honourable place in the competition of intellectual progress. Unless something of the sort be done, the demand of the Irish Catholics remains untouched, the inequality unrectified, and the injustice unredressed. If one section of the community receives from the State the completest apparatus for teaching under conditions of which it cordially approves, and another is denied any use of the apparatus because its principles forbid it to fulfil those conditions, the disparity is flagrant, and, in a country where men are equal before the law, ought surely to be done away with. Now, my lords, I am sorry to say that this, the real grievance to be dealt with, is not even touched by the proposal of this Bill. It is substantially a reproduction of the supplemental charter of 1867, which was so violently denounced by the enemies of the Liberal Administration of the time, and destroyed by the efforts of the friends of the Queen's Colleges. And it is offered when circumstances have wholly changed, after the negotiations with Lord Mayo, the rejection of Mr. Gladstone's Bill, the acceptance of the principle of educational equality by many of the best and most influential Conservatives and Liberals in the House of Commons. It is a thing born out of time, and felt on all hands to be an unwelcome and unacceptable abortion. It offers merely the opportunity of obtaining degrees in a new university to all comers wherever and by whatever means they have obtained the knowledge necessary for matriculation. But it gives no aid towards the attainment of that knowledge. It makes for the majority no compensation or counterpoise for the abundant provision secured to the university. It avoids the difficulty and ignores the complaint with which

the Legislature has been asked to deal. No doubt the increase of facility for obtaining degrees is in itself a good thing; but even with reference to that, its sole concession, it really gives nothing to the people of Ireland. They have already the right to obtain degrees in Trinity College without living there, and those degrees will for many a day have a higher value than those comparatively discredited by the novelty of the institution which bestows them. They can graduate in the London University, passing at their own homes the examinations which are held in Ireland by its officers, and again degrees so obtained are certainly not less valuable than will be those of a university still *in posse* and as yet unnamed.

This Bill gives the Irish Catholic nothing which he has not in better form already, and denies him everything for which he has asked and waited through years of deferred hope, and social disadvantage, and pecuniary sacrifice. He demands educational equality, and his inferiority is continued, and Parliament is invited to sanction and perpetuate the wrong against which he has protested. My lords, I say, in the words of a great journal not unfriendly to the Government, 'This measure will never do.' If any change was to be made, surely it should have aimed to supply admitted wants and content reasonable aspirations. This Bill is its own condemnation: 'Habemus reum confitentem.' It is a solemn confession of the need of improvement, and it leaves things no better than they were. Why should this be? Why should one class of the subjects of the realm who loyally bear its burdens and sustain its interests as much as any other be debarred from privileges which others enjoy because they prefer religious education, and decline for their children education which is not religious?

I remember, whilst the school controversy raged in England, feeling some sense of indignation when I heard a

leading secularist at once haughtily and condescendingly declare that denominationalists might educate their children if they pleased according to their own principles, but that they must pay for the education out of their own pockets. The secularist and the denominationalist must pay the same taxes and sustain the same social liabilities, but one is to have his child instructed with the public money and the other at his own expense. It seemed to me that there was as little of equity in such an arrangement as of modesty in the pretension to such a preference by the State for one set of opinions, when all opinions consistent with the welfare of the commonwealth should enjoy an equal favour. If this Bill should pass in its present shape those who are desirous of religious education will stand precisely where they are, with an additional opportunity of scrambling for degrees as best they may, whilst Trinity College, the Queen's Colleges, to which *ex hypothesi*, and on concession, they will have practically no access, will retain their great revenues and shower golden prizes of fellowships and scholarships, bursaries and exhibitions on those who are so fortunate as to belong to them, and supply all the appliances and means of a perfect education, while the multitudes outside who cannot share in these good things will be left to pine and struggle in the hopeless effort to achieve such knowledge as may enable them to compete on equal terms with their neighbours in the battle of life.

Assume what this Bill confesses to be true, that there are very many in Ireland whose convictions must put them in this position, and what have we but penalties still imposed for the free exercise of conscience, and premiums still bestowed for the profession of particular opinions? My lords, I do not despair of seeing this Bill amended in its further progress. It is at present an ungainly skeleton. But it may easily be clothed with flesh and muscle, ani-

mated with life, and made pleasant to behold and profitable to use. I still hope for the just and reasonable settlement which Government has power to make, and from which it will earn gratitude and honour. Let it seize the opportunity of solving a vexed and embarrassing and dangerous question. Let it refuse to disappoint the awakened hopes of Ireland. It has made frequent admissions; let it accept their consequences. It has confessed a grievance; let it be wise and generous in affording adequate redress.

The Bill passed through the House of Lords substantially unaltered. But in committee in the House of Commons a new clause was inserted by the Government which in effect constituted a most important part of the measure. This Clause enacted that it should be the duty of the senate, within twelve months after their first appointment, to prepare and forward to the Lord-Lieutenant a scheme for the better advancement of university education in Ireland by the provision of specified buildings in connection with the new university, and by the establishment of exhibitions, scholarships, and other prizes subject to certain conditions. The scheme was afterwards to be laid before the two Houses of Parliament.

The Bill was read a third time on August 11, and before the close of the session received the royal assent. The Duke of Abercorn was created first chancellor of the new Royal University, and Lord O'Hagan was elected vice-chancellor. In compliance with the provision of the Act referred to above, the senate drew up a scheme which they submitted to the Lord-Lieutenant, and which was presented to Parliament on April 5, 1881.

This scheme, after some slight modifications, was approved by the Liberal Government which was now in office, and a Bill was introduced and passed through Parliament, in August 1881, granting an endowment of 20,000*l*. a year to the royal university, to be charged upon the property in the hands of the Irish Church Temporalities Committee.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, MAY 19, 1871, *IN MOVING THE SECOND READING OF THE IRISH JURIES BILL.*[1]

INTRODUCTORY NOTE.

An explanation of the provisions of the Bill and of the evils which it was meant to remedy is contained in the speech itself.

From an early period of his professional career Lord O'Hagan had felt deeply the injustice of the Irish jury system. When he became a peer of Parliament,[2] and considered how he might utilise his position for the benefit of Ireland, it came into his mind to make some attempt at legislation on this momentous subject.

The Irish Jury Act of 1871 was the result.

[1] This and the next speech, both on the Irish Jury Act of 1871, are placed here somewhat out of chronological order, as I wished to present them to the reader in conjunction with the third on the same subject which was composed after the Act had been in operation for ten years.

[2] He was raised to the peerage, by the title of Baron O'Hagan of Tullahogue, in June 1870. He had been Lord Chancellor of Ireland since December 1868, and continued to hold that office till the going out of the Liberal Government in 1874. On the return of the Liberals to power in April 1880, Lord O'Hagan was again made Chancellor, but, owing to failing health, he resigned in November 1881. *Vide* note G. at the end of the volume.

SPEECH.

My Lords,—In asking your lordships to read this Bill a second time I feel it right briefly to indicate the necessity in which it has originated and the general nature of the provisions which it contains. It is at once a Bill of consolidation and amendment. It presents in a convenient form all the scattered provisions of existing statutes affecting the jury system of Ireland which may be judiciously continued in operation. With the complicated details of this part of the measure I shall not trouble your lordships, but I shall invite your attention to the principles on which, as a measure of amendment, it has been based. In this sense it is of much urgency and of serious importance to the Irish people. It deals with a great and acknowledged evil. For more than twenty years successive Governments of both the great parties in the State have endeavoured to remove this evil, and at least nine Bills have been introduced by successive law officers for that purpose. But not one of them has been prosecuted to any successful issue, and the jury law of Ireland remains at this moment very much as it was when, in 1854, the first of the series was prepared by the present Lord Chief Justice of Ireland.[1] In the intervening time, I am sorry to say the mischiefs which my right hon. friend and his successors vainly sought to remedy have not diminished, but have rather become aggravated, in their character. A few weeks ago a witness of great experience in the conduct of criminal business

[1] Mr. Whiteside.

in Ireland gave this testimony before the Westmeath Committee: 'I think that the state of the petty jury panels in Ireland at this moment is perfectly frightful; it is utterly absurd at present, in my opinion, to expect that justice can be effectually administered if the petty jury panels are not amended.' These are strong words, and they evidence an opinion which long has prevailed as to the working of the system: whether it has been considered from the popular or official point of view—it has long been regarded with suspicion and discontent, and cases have continually arisen in which it has been held by large classes of the community to have produced a defeat of justice.

The Bill which I offer to your lordships aims to improve this unhappy state of things, by dealing principally with four matters of vital consequence to the accomplishment of an effectual reform—the qualification of jurors, the preparation and revision of jury lists, the compelled service on juries by rotation, and the abridgment, within proper limits, of the uncontrolled and irresponsible discretion now exercised by the under-sheriffs in selecting and arranging the panels as they please. I shall venture, in the fewest possible words, to explain to your lordships consecutively the operation of this Bill with reference to each of these important matters. First, as to the qualification of the juror, it continues to this hour as it was settled nearly forty years ago by the 3rd and 4th Wm. IV. c. 91. That Act was introduced by one of the most noble-minded men of his own or any other time—the late Mr. Justice Perrin—whose great public services, in connection with the administration of the criminal law of Ireland, ought never to be forgotten by her people. His Act was one of consolidation, and it adopted the conditions theretofore properly required to qualify a juror. In counties he must have been a freeholder or a leaseholder, in towns a resident merchant,

freeman, or a householder. Now, since that Act was passed, a great change has been wrought in Ireland. The abolition of the forty shilling freeholders, the disassociation of the franchise from tenure, and various economic and social agencies, have enormously diminished the classes to which only the duty and the right of acting as jurors were then entrusted. The great mass of tenant-farmers do not now possess the freehold or the leasehold which is necessary to bestow them. The result is startling. Of every hundred persons equally qualified in point of substantial property, some forty-five are, on the average, legally excluded from the jury-box by reason of their want of a leasehold interest, and in various counties even a larger proportion suffer in the same way. In some, 55 per cent.; in some, 58 per cent.; in some, 60 per cent.; and in some, 66 per cent. of people perfectly competent to serve, and, in many cases, far more competent than those who do, are excluded for the same absurd reason. This is one grievous result of the present condition of the law, ignoring the quiet revolution which has changed the character of the community, and equally inconsistent with individual right and public interest. And it has this further consequence, that, in many districts, legally qualified jurors are not actually to be found in sufficient numbers to do the business of the country. In several instances persons who have had an interest in delaying or defeating the administration of the law have exercised the power of challenge so as absolutely to prevent a trial for lack of freeholders or leaseholders. And there are few places in which similar efforts, persistently made, would not, for that reason, bring justice to a dead lock. These are some of the evil results of a system which acts through unworkable statutes, designed to regulate a defunct state of things.

I might multiply the enumeration of them, but it is

needless. The remedy I suggest is to get rid entirely of the old qualifications, and to substitute for them the single and simple one of being rated to the relief of the poor to a certain amount. That amount the Bill fixes at 30*l.* for the common juror, at once securing respectability and intelligence, and largely increasing the body of qualified persons. For whilst at present there are scarcely 30,000 so qualified in all the agricultural districts of Ireland, the number of occupiers rated at 30*l.* and upwards appears to be 76,059. The increase, therefore, of competent, reliable, and trustworthy men would be very great indeed, and the anomalies and mischiefs of the existing arrangement would be substantially done away with by the change. At the same time I would not wish your lordships to understand me as saying that the amount of qualification I have named is necessary to be accepted. There may be difference of opinion as to its sufficiency or as to its excess, and this may be fair matter for consideration in committee. The Bill names that amount, because it has been adopted in former Bills, with some acceptance on both sides of the House of Commons, and somewhat by analogy to the qualification under the poor law. But, as I have said, it may fairly be considered; and with reference to some of the smaller counties consideration may also be had of some exceptional provision which their peculiar condition may make desirable. But I submit that the principle of qualification which I have explained to your lordships is simple, just, satisfactory, and available for practical use, as it has been found in connection with the Parliamentary franchise; and at the present stage of the measure this is sufficient to justify me in offering it for your approval.

The next matters to which I propose, in a word or two, to advert are the preparation and revision of the jury lists. And, as to both, this Bill proposes a material reform in the

existing system. The lists are prepared by the barony constables who collect the county cess, and the revision takes place at stated periods in the presence of justices. Both operations are imperfectly performed, and both need to be performed with complete efficiency if we would have the jury system work satisfactorily. The constables are not, in some instances, very competent to the discharge of a duty which was cast upon them, because there were no other officials to whom it could be conveniently entrusted; and, generally speaking, they do not seem to feel themselves bound to be careful in performing it. The result is demonstrated in the condition of the jury lists for 1869, which exhibit on the face of them the names of 2,921 persons placed there by reason of qualifications which are not statutable. The clerks of the poor-law unions, who are men of intelligence, placed in positions of responsibility, can best discharge this duty. They fulfil a like function in relation to the franchise, and this Bill substitutes them in the place of the barony constables.

Then as to the revision: I regret to say that its execution is habitually and grievously unsatisfactory. The attendance of the justices is irregular and uncertain, and that of the officials, who ought to aid them, quite as much so, and the result is that the work is wretchedly done. If it were otherwise, blunders so flagrant as that which I have mentioned just now could not possibly have been allowed to disfigure the lists. The Bill will take the revision from its present controllers and transfer it to the Court of Quarter Sessions, where already the parliamentary voters' lists are revised. The same documents and the same officials will, under the new arrangement, be used in setting the jurors' book. The lists thus constituted having been filled with an ample number of the names of capable and reliable men, the Bill will operate to remove another most serious evil. An effort

was made in the Irish Parliament, seventy years ago, to secure, through the 40th Geo. III. c. 71, a proper rotation of jurors. Similar efforts have since been made in the Imperial Parliament, and in 1870 an Act was passed for England providing that no juror should be summoned more than once a year. But in Ireland the practice has been, unfortunately, to summon the same persons over and over again, to the great oppression of many individuals, and to the injury of the public by the exclusion of multitudes from the discharge of a duty cast on them by the law, which they are competent and willing to perform. The evil has especially been developed in the metropolis. It has there imposed a grievous burden on many respectable men, and it has brought discredit on the administration of justice. This Bill provides that the jurors shall be taken by rotation from the general list by the sheriff, under the pressure of a penalty, with the object of compelling every man upon it to do his duty in his turn, whilst no one, so far as may be practicable, will be required to serve more than once in three years. I believe that this arrangement, if efficiently enforced, will prove a great relief to many worthy persons, and much promote the public interests.

There remains the fourth object of the Bill in its amending character—the abridgment of the arbitrary and uncontrolled authority of the sheriff in shaping the panel at his will. This has long been the source of bitter feeling and the subject of loud complaint in Ireland; and the power has not been exercised in such a way as to soothe the one or satisfy the other. The popular cry against it has been very violent from time to time, and not without justifying cause, as has been shown by many challenges to the array on the ground of partiality. To one of these only, and the latest, I shall call the attention of the House as illustrative of this part of the case. In 1869 such a chal-

lenge succeeded in one of those unhappy sectarian trials which sometimes occur in Ireland, because it was shown that of the first seventy names on the panel only six were those of Roman Catholics, and that on the whole panel of 250, 202 were those of Protestants and 48 of Catholics, whilst the number of Catholics on the jurors' book was 800, and of Protestants 400 only. Cases not unlike this might be multiplied, and the House will not wonder that when they arise they are fruitful of much just dissatisfaction and much popular indignation. But, on the other hand, the officers of the Crown have also reason to complain; and their feeling found emphatic utterance in the evidence given before the Westmeath Committee, to which I have before had occasion to refer. Thus Mr. Mooney, the Clerk of the Crown for Westmeath, a gentleman of high character and respectability, expresses himself in answer to the questions of the committee :—

I understand you to say that you are not satisfied with the existing state of the jury law?—I am not satisfied with the existing state of the jury law.

Do you think that it is fair to the Crown as it stands?—I think it is quite as unfair to the Crown as to the subject. The sheriff is almost irresponsible. If the sheriff chooses to return a jury that he thinks will suit the purpose of the Crown he can do it, and if he chooses to return a jury that he thinks will suit the purposes of the prisoner he can do it.

And the oldest Crown solicitor in Ireland, who has discharged the duties of that office for nearly fifty years, says :—

The formation of the petty jury panel is now entirely at the discretion of the sub-sheriff, who is often the friend of and influenced by the attorney for the prisoners.

And, again, in answer to questions put by the committee :—

Did I understand you to say that the sub-sheriff was fre-

quently influenced by the solicitor employed for the accused?—Most frequently. I know cases of it myself. . . . I have seen by the acts of the sub-sheriff that he was influenced by the prisoner's attorney. I cannot prove that he receives money or that he is bribed by him, but for a person who attends the criminal courts so constantly as I do, it is very easy to observe the influence the attorney has with the sub-sheriff.

If there be any correctness in the statement, is not this intolerable either way? Ought not the complaint to command attention and redress, whether it comes from the accused or from the prosecutor—whether the jury is packed to convict or acquit? Should any man be allowed to exercise such authority—absolutely without restraint or practical responsibility—in cases of the gravest civil moment, and in the still graver cases which affect human liberty and human life? The straight, stern march of justice should not be interrupted or made to waver by the caprice or the partisanship of any official; and whilst it is possible that the settlement of a panel may be ascribed to enmity or favour, the people cannot have respect for the tribunals or confidence in the action of the law. To put an end to such an evil possibility, this Bill provides that the sheriff shall array his panel, not at his own discretion or according to his own fancy and complexion, but on a settled system, putting its character wholly beyond his control. He will be required to take the names from the jurors' book in alphabetical series, beginning with the first name in A, then taking the first name in B, and so on to the end of the alphabet; and then returning to A and proceeding through the same process until a sufficient number of jurors shall have been obtained. In this way, the names being taken from a thoroughly revised jurors' list arranged on the basis of a proper and reasonable qualification, the sheriff will be deprived of any means of unduly operating on the consti-

tution of a panel or the findings of a jury, and so I believe the law in its habitual operation will be made not only pure but above suspicion; and the suitors in the Irish courts will have a full trust in its integrity, such as has never within the memory of man prevailed amongst them where there has been question of trial by jury.

These, my lords, are the principles on which this Bill has been constructed, and which I venture to commend to your favourable consideration. As a measure of consolidation I think it will be found to have been prepared with anxious and elaborate care, and as a measure of amendment I am convinced that it will advance the interest and the honour of the administration of justice, and give to Ireland the great advantage of intelligent and independent juries—unaffected in their creation by prejudice or party, and worthy to enjoy the confidence of the community.

The Bill was read a second time after a short debate, and on July 4 it was read a third time. It was introduced into the House of Commons by the Solicitor-General for Ireland (Mr. Dowse), and read a second time on July 17. In committee the qualification as to property was lowered. The Bill passed through the House and received the royal assent on August 14, 1871 (34 & 35 Vict. c. 65).

A SPEECH DELIVERED IN THE HOUSE OF LORDS, AUGUST 4, 1876, ON THE SECOND READING OF THE JURIES PROCEDURE BILL.

INTRODUCTORY NOTE.

Lord O'Hagan's Jury Act of 1871 in the first year of its existence was attacked from many quarters.

In the House of Lords, in the House of Commons, by the grand juries in most of the counties of Ireland, and in the Conservative press it was criticised and ridiculed. The chief ground of complaint against it was the alleged incapacity of the persons whom the new law admitted to the jury-box.

In consequence of this outcry a Select Committee of the House of Commons was appointed in 1873 to inquire into the working of the jury system; and, after the change of Ministry in 1874, another committee, presided over by the Solicitor-General for Ireland (Mr. Plunket), continued the investigation.

A Bill called the 'Juries Procedure Bill,' based on recommendations from these committees, was introduced into Parliament in 1876. In its amended form this measure retained the great principle of Lord O'Hagan's Act, which secured perfect impartiality in the formation of panels, and, amongst other additions and alterations, it required an increase of qualification as to property. It provided that the jury, in all criminal cases as well as in civil, should be balloted for, and it gave to each party in civil trials, and to every person tried for a misdemeanour, the right of challenging six jurors.

The Bill passed through the House of Commons, and it was introduced into the House of Lords by the Duke of Richmond and Gordon—the President of the Council—who moved the second reading on August 4. Lord O'Hagan, in supporting the motion, made the following brief defence of the Act of 1871.

The Bill was read a second and third time and became law.

SPEECH.

I DESIRE to offer my best support to the measure introduced by the noble duke. It is a supplement to the Bill which I carried through your lordships' House in 1871. I have, therefore, felt much interest in it, and I have considered its provisions. It fairly fulfils the recommendations of the committee of the House of Commons, and will be of signal advantage to the public. The Act of 1871 has been the subject of much hostile criticism and some unscrupulous assaults. It has been attacked as to its principle and as to its details, especially as to the amount of the jurors' qualifications. Now, on the last matter I may say a word. The Bill of 1871, as introduced into this House, was framed with a desire to make the rating qualification as high as might be consistent with the supply of a sufficiency of jurors. After long consideration it was passed unanimously by your lordships, but when it went to the House of Commons the qualification was reduced, and the Bill must have been lost if the reduction had not been accepted, so that if injury arose in that regard, and it became necessary to make such an alteration as has now been effected, the fault was not that of this House or of the author of the measure. As to the principle of the Act, I congratulate the Government on the firmness with which it has been maintained in its full integrity. I never dreamt it was perfect or hoped that it would work perfectly at once. I knew that the English jury system, coeval with the constitution, accordant with the genius of the people, and

cherished by them as one of the proudest national possessions, is still admitted by them to need great improvements, and that year after year Parliament has been endeavouring to improve it.

The experiment in Ireland was novel as it was difficult. The Act of 1871 wrought in a sense a social revolution. It opened the jury-box to classes who had for generations been jealously precluded from any interference with the courts of justice. It took away the mischievous discretion with which official persons had been accustomed, sometimes honestly, sometimes capriciously, and sometimes corruptly, to manipulate the panels at their good pleasure, and put an end for ever to the notorious packing which so often made trial by jury a scandal and a farce. A change so great could not be accomplished without exciting susceptibilities, arousing prejudices, and alarming vested interests, and, accordingly, there was an outcry loud and long—an outcry official and political—which found a pretence of justification in the conduct of jurors for the first time called to discharge one of the highest, as it is one of the most difficult, functions of a free citizen, and in some instances necessarily committing errors and absurdities from which even the training of centuries does not enable their brethren of England always to escape. Of these absurdities and errors the most was made. Ridicule, abuse, exaggeration were employed without measure or mercy, and the real effort was to reverse the principle of the law. All this has failed. The Government have done well and bravely in refusing to touch the principle, or permit the licence of the sheriff again to bring justice into suspicion and contempt. They have amended the Act by raising the qualification and adopting the administrative changes which experience has shown to be desirable, and which all who have considered the question approve; and with the help of this measure there is every

reason to hope that the Act of 1871 will work efficiently and satisfactorily. I need not particularly refer to the provisions which have been clearly summarised by my noble friend, but I especially commend those by which I trust jurors of station and wealth in Ireland will be compelled to do the duties which in spite of repeated remonstrance and rebuke from the Bench they have too much abandoned to their humble colleagues. This is a great public evil, and the redress of it will go far to rectify any shortcomings of the present action of the law, of which I had hoped that one of the results would be the harmonious combination of men of various classes in the discharge of a great public trust of equal interest to them all, with beneficial consequences to the order of society and the administration of justice. I trust your lordships will give a second reading to this Bill.

A SPEECH (NOT SPOKEN) ON THE MOTION FOR A SELECT COMMITTEE OF THE HOUSE OF LORDS TO INQUIRE INTO THE OPERATION OF THE IRISH JURIES ACT.

INTRODUCTORY NOTE.

On May 23, 1881, the Marquis of Lansdowne moved that a select committee of the House of Lords be appointed to inquire into the operation of the Irish jury laws as regarded trial by jury in criminal cases. The motion was agreed to after a short debate.

Lord O'Hagan had intended to speak at some length on the question, but, after having listened to the remarks of Lord Lansdowne, which were replied to by Lord Carlingford, he decided that the occasion was not one for discussion, and he merely said that he agreed on the propriety of appointing the committee, and that he would reserve any observations he had to make on the subject.

A few days afterwards Lord O'Hagan wrote out the following speech, embodying what he had meant to say with reference to Lord Lansdowne's motion.

It will be of interest as giving a brief history of the Act which is associated with his name, and answering some of the allegations urged against it.

Lord O'Hagan had not another opportunity of speaking on the question.

SPEECH.

My Lords,—I concur with my noble friend behind me,[1] that the Committee desired by the noble marquis[2] may properly be conceded; and I trust that its action may be searching and complete. And, having said so much, I should be content with the expression of my approval of the course adopted by the Government, but that I think some reference to the history of the Irish jury system, and of the Committees which have sought to improve it, and some short statement of the motives and the circumstances in which its latest developments have originated, may not be without interest and advantage in relation to the objects of the proposed inquiry. Having had much to do with the legislation, which originated in your lordships' House, for the reform of that system, I am reasonably anxious that it may be dealt with carefully and wisely; and to that end the experiences of the past may not be without utility in the difficulties of the present. It will be found that similar difficulties have existed before, and that, unhappily, complaints like those which they now create have been repeatedly heard in successive generations. Looking to the early history of the legislation as to Irish juries, I have not found much matter for useful observation before the passing of Judge Perrin's Act in 1833, which, with the rules prepared by that most eminent judge, was the first effectual alteration of arrangements, which, varying from time to

[1] Lord Carlingford.

[2] The Marquis of Lansdowne.

time, had theretofore practically excluded from the jury-box the majority of the population on the score of their religion. But I shall only advert to one incident of the older days, as curiously proving that the objection to the exercise of the sheriff's unqualified discretion, which this House condemned by accepting the Act of 1871, was felt and acknowledged very long ago. This is the preamble of the 10 Chas. I. s. 34, 3. s. 78:—

> Forasmuch as grievous complaints are many times made of the misdemeanour and evil behaviour of under-sheriffs, who oftentimes having to them committed by the high sheriff the whole or part of the exercising and executing of the office of high sheriff, and not taking any corporal oath as the high sheriff doth, for the executing and discharging of the same office, do, therefore, daily most injuriously through corruption and affection impanel jurors for the King's Majesty, and betwixt party and party, to the great loss and hindrance of his Majesty's loving subjects.

For reformation thereof the Acts provided by imposing certain official oaths on the under-sheriffs, bailiffs, deputies, and clerks who should meddle with the impanelling of juries.

It is strange to encounter, centuries later, the same description of some members of the same class, as exercising and executing the same functions, with 'corruption and affection,' in Ireland in the year 1871. Your lordships will find it is so, when I come to state to you some of the evidence on which you then acted, in my judgment, wisely and well, by abridging the sheriff's uncontrolled and irresponsible authority. That similar apprehensions of the abuse prevailed in the minds of the Irish Parliament at a much later period, and that the provisions of the Act of Charles had not proved effectual, is singularly shown by two statutes of George II.—the 19 Geo. II. c. x., and

the 21 Geo. II. c. vi.—Further statutes were passed in the year 1745, and they transferred the duty of making out panels in civil cases from the sheriffs and their deputies to three judges of the Supreme Courts, to be chosen, one from the Queen's Bench, one from the Common Pleas, and one from the Exchequer. The history of these Acts is very obscure, as is the history of Ireland generally at the period when it took place; but the statutes demonstrate, on the face of them, by the substitution of the judges for the sheriff, an absence of legislative reliance on that officer, and a continuance of the distrust which ultimately took from him his often misused power.

In the reign of George IV. several attempts were made to improve the jury systems of England, Ireland, and Scotland. In Scotland, as is not unusual in that country, resistance to change was very earnest and obstinate, though it collapsed at last; and in Ireland, several tentative efforts culminated in Judge Perrin's Act of 1833—the 3 & 4 Wm. IV. c. xci.—which regulated Irish juries until 1871. That was an important measure. It created a uniform qualification, and provided a better arrangement of the jury list, and it was accompanied by formal directions to the Crown solicitors, which diminished the risk of jury-packing, and forbade the exclusion of men from serving as jurors because of their religion. Of this great change an historian of the time thus describes the reception by certain classes of the community: 'Throughout the island the Protestants, who had always regarded their neighbours of another faith as idolators and rebels, saw, with amazement and horror, that they were trusted to try the accused, to administer the laws, and to transact the business of society, as if they hated the Pope and cursed the Jesuits.' The statement may be too strong and broad, but this irritated feeling and other circumstances induced, very soon after it

was passed, a violent dislike for Judge Perrin's measure, so that in the year 1839, less than four years after it had come into operation, a Select Committee was appointed to consider its working and results. That Committee heard many witnesses, and their complaints against the new Act were strangely identical with those which have assailed the existing system. Major Warburton described the jurors as 'totally' unqualified. Others condemned them as very illiterate, many being unable to read or write. The judges were represented as denouncing the verdicts; and the Crown solicitor of Sligo bore testimony to the uselessness of going to the expense of an abortive assizes in that county, where convictions could not be had.

I refer to these opinions as showing how difficult it is to work with efficiency a new law when it disturbs old habits, and brings new classes into action without adequate instruction or preparation for novel duties suddenly cast upon them. Judge Perrin's Act, however, survived the vehement assaults upon it, and still governed juries in 1852, when a Select Committee of the Commons sat to consider a state of things full of anarchical confusion in counties of Ulster, and bordering upon it. That Committee necessarily inquired as to the constitution and character of the juries which were required to deal with a series of terrible outrages; and again, official persons condemned them in unmeasured terms. *Inter alia*, Captain Fitzmaurice proclaimed many of the jurors as a 'very bad class of men,' and the majority 'as partisans'; and Captain Warburton lamented the great difficulty he found 'in getting them to do their duty.' Again, I refer to these declarations of faithful officers as showing that the state of things which we all lament is not quite new in Ireland, and would probably have equally existed in our actual circumstances had we still the abolished law. The Committee of 1852 made two recommenda-

tions: first, that there should be a rating qualification and a single panel for the trial of civil and criminal cases; and, secondly, that measures should be adopted 'to secure strict impartiality in the construction of the jury panel.' Only one of these recommendations, as to the single panel, was carried out before 1871. Meanwhile the condition of the juries became worse. The Act of 1833 had provided a leasehold qualification, and leases having diminished in Ireland, from the change in the franchise and other causes, it became difficult to get a sufficient number of persons qualified to serve, and great inconvenience arose. Legislation was essential, but it was found to be extremely difficult. Nine several attempts were made, in separate Bills, by successive Attorney-Generals, to supply the necessity, and they were all abortive. It was attempted, in 1854, by Chief Justice Whiteside and Lord Chancellor Napier; again in 1855, by Mr. Justice Keogh; again in 1856, by Mr. Justice Fitzgerald; again in 1858, by Chief Justice Whiteside; again in 1859, by Chief Justice Whiteside; again in 1866, by Mr. Justice Lawson; and again in 1868, by Judge Warren, now the Judge of the Irish Probate Court. The Bills all varied in their provisions, and none of them became law. They all aimed at limiting the discretion of the sheriff, and some of them at abolishing it altogether.

I undertook a similar task, and introduced to your lordships' House the Bill of 1871. The circumstances under which I undertook it were these: first, the deficiency of the leasehold qualification made the substitution of another absolutely necessary; secondly, the character and competency of the jurors generally—as described in the evidence I have stated—so far from improving, after 1839 and 1852, had become worse, as was proved by Mr. Seed, a Crown solicitor of great experience, before the Westmeath Committee of 1871. He said: 'The present jury system

certainly breaks down. A class of persons will be found on all the panels of petty jurors in Ireland, as now constituted, who are wholly unfit to be entrusted with the trial of any prisoner for an agrarian crime. I heard it stated, on an important trial lately, that three of the jurors had subscribed for the defence of the prisoners they were trying. The formation of the petty-jury panel is now entirely at the discretion of the sub-sheriff, who is often the friend of, and influenced by, the attorney for the prisoner.' It is singular that the description of the sub-sheriff for 1871 so exactly corresponds with that given of him by the preamble of the Statute of Charles I., and to the opinion, *quoad* the jury system, indicated by the Legislature, when, in 1745, it transferred the duty of framing the panels to the Judges of the Supreme Court of Law.

And this brings me to the third, and one of the most urgent and justifying causes of the Act of 1871. The power of the sheriff in framing the panel was absolute. And a fearful power it was. He arranged the names just as, for any purpose, good or bad, he desired to place them. A challenge to the array could rarely succeed from want of proof of corruption or non-indifference. In cases between the Crown and the subject he could favour either, without check or supervision. On an indictment for a party quarrel he could eliminate the jurors unfavourable to the cause which he espoused; or, if the growth of opinion induced him to condescend to a concealment of his purpose, he could rank them so low in the list as to make it almost impossible that they should be called, and so render their attendance an idle mockery. These things were done, in former days, habitually and continually, especially in connection with the factious broils of the northern province. The mere arranging of the jury proclaimed a foregone conclusion; and the game of justice, as was said by a great

advocate in a famous case, was played with 'loaded dice,' the stakes being the lives and liberties of men. The noble marquis has called attention to the strong observations of learned judges, condemnatory of certain findings and certain disagreements in some Irish counties. Whether judicial energy might not be better employed in urging right conclusions, than in denouncing those which ignorance or prejudice suggests to humble men, may be a question; but the observations alluded to might easily be overmatched by others, in which those judges, of former days and under another system, were compelled to 'thank God, that the verdicts were not theirs!'

And matters were all the worse because the high sheriff never did the jury work himself, but left it to his deputy, who might be of small position and no repute, and open to all evil influences, sometimes arranging panels in criminal trials with a sinister design, and securing verdicts for a consideration in civil causes. In my earlier years I had much experience of the effects of this wretched system, and I resolved to attempt to end it if ever I should have the chance. It often kindled public indignation. It was frequently the subject of discussion and rebuke in Parliament, and, in my judgment, the time had come when its abolition was essential to remove temptation from officials, neglect of their duty and oaths from jurors, and flagrant scandals from the administration of justice. The case of Mr. O'Connell and his co-traversers intensified the national dislike to a mode of action which placed the greatest Catholic and Liberal of his generation in the hands of a jury composed of men, notoriously and exclusively, his adversaries in politics and religion. His conviction, under such circumstances, received severe animadversion in both Houses of Parliament, and bitter condemnation in Continental countries.

Under these circumstances, the Bill of 1871 was brought before your lordships. It carried out the recommendations of the Committee of 1852, by the establishment of a rating qualification and an honest effort to secure the 'strict impartiality of juries.' It took away the possibility of impeachment of the sheriff, by depriving him of the power of selection, and, for the first time since the introduction of English law into Ireland, gave its people an absolute assurance that, for no purpose and in no circumstances, should a packed jury thereafter pollute the fountains of justice. It threw open the jury-box to multitudes who had suffered perpetual exclusion from it, and gave them the fair satisfaction and the wholesome training—which has been of such profit to the English race—of taking a public part in the administration of affairs. Its provisions were well and carefully considered, with a single view to the general interest, and it was introduced to your lordships' House with a simple, full, and candid statement of them all. I felt that a measure calculated to make so great a change should not be accepted without the full knowledge of all whom it concerned. And, accordingly, it was communicated to all the chief organs of opinion in Ireland, without regard to creed or party. It was retained in this House for more than the usual time, and it went down to the other without, so far as I know, a single objection to one of its clauses, or a single protest against the principle on which it was framed. In the House of Commons it was received with equal and universal favour, and the only change made in it was effected by lowering the qualification which I had proposed, and of which your lordships had approved. The Act came into operation, and, like Judge Perrin's Act, it did not work smoothly all at once. Of necessity it brought crowds of new men into the jury-box who had never been there before. There was no longer a

charmed circle of the sheriff's choosing, who had been allowed to gather at every sitting and every assize, and who too often abstained from doing their duty in company with humbler men, when their monopoly was gone.

In the result, there were inevitably exhibitions of ignorance and awkwardness in the performance of duties which the new jurors had never learned to do; they lacked experience and familiarity with their new position, and a roar was raised against them, which was echoed and swelled by official persons, who had the ingrained conviction that the control of the panel and the liberty of packing were essential to the efficient administration of the law. Again, in 1874 as in 1839, there was a Committee which heard much evidence from most competent persons as to the working of the Acts; and the powerful Government which was then in office, and could have done what it pleased, made such changes by repeated legislations as it deemed proper and sufficient. And so matters remain at present. The statute of 1871, with the modifications made in it by the late Administration, regulate the jury system in Ireland.

Pending the appointment of a Committee, it would not, I think, be useful or becoming to anticipate or discuss the results at which its inquiries may arrive. I shall not attempt to do so. But it may not be unadvisable to suggest one or two of the objects to which these inquiries may be advantageously directed. It will be very necessary to consider the various operations of the law in various places. I cannot judge of its general working, but I believe that in Dublin it has accomplished a great improvement in the character of juries, and that with a little more attention to the revision of the lists it will be found to effectuate its purpose completely. It has displaced a class of jurors who did no credit to the Courts of Justice, and given security and confidence to suitors which they did not enjoy

before. Throughout the country, and the North of Ireland especially, it has put an end to the intolerable abuse of partiality in political cases, and done substantial service by bringing together men of hostile opinions for the discharge of public duties, and so promoting the harmony and mutual goodwill which, I am glad to believe, prevail more largely than in former times. In some districts it operates satisfactorily; whilst in others, as has been shown by the noble marquis, it is, unhappily, open to great exception. The distinctions and the circumstances in which they originate should be well considered by the Committee. Again, it will be proper to deal with the evil which is caused by the abstention of gentlemen of a higher class from attendance on juries in criminal cases. The mixture of persons in various social grades was relied upon, in 1871, as a regulating and enlightening influence, and it is a matter for great regret and, if possible, for efficient correction, that whilst humble men throng to the Assize Courts they are too much deserted by those of more cultivated intelligence and loftier station. Again, I have reason to know, from the statements of my judicial friends, that the provisions of the Acts are often neglected as to the revision of the lists and the summoning of jurors. A great deal of evil is caused by this neglect, and the attention of the Committee cannot be too carefully addressed to the discovery of a remedy for the mischief. If these things and others of a similar kind are noted, and if they are dealt with wisely, the Committee will greatly promote the practical improvement of the system whilst it will maintain the cardinal principle of strict impartiality and absolute independence of the illicit control of political partisanship or official corruption.

GENERAL INTRODUCTION

TO SPEECHES ON THE IRISH LAND LAWS.

THAT the advanced thinkers of one age are the legislators of the next is now among the commonplaces of political philosophy. It was never more verified than in the case of the relations between landlord and tenant in Ireland. The grievance and the cure it demanded could not be stated to-day with more unanswerable force than they were fifty years ago. But history is a great school of patience.

The speeches of Lord O'Hagan on the Irish Land Laws tell substantially their own story.

The statement of the causes to which the wretched condition of the Irish agricultural tenant has been attributed may be thus condensed :—

1. The premature condemnation and abolition of the old Irish tenure. Rude and imperfect, like the primitive land laws of all countries, that tenure was, nevertheless, based on ideas of equality and justice, and would probably have developed into a kind of copyhold. Sir John Davies swept it away as 'scambling' and insecure. He sincerely desired to give the occupier a more permanent hold of his land, that he might improve himself and it. He never contemplated a nation of tenants at will.

2. The confiscations, that is to say, the violent transfer of the lordship of the soil to an aristocracy whose sympathies were at the opposite pole from those of the people whom they governed.

3. The agrarian penal laws, debarring Catholics from obtaining the slightest interest in the soil except a short lease of 'unprofitable bog,' which they were allowed to improve for the landlord.

4. The political penal laws, depriving Catholics of every right of citizenship, even the elective franchise, and thus making them not worth conciliating or considering.

5. The crushing out by England of Irish manufacturing industries, so as to make the land the sole mode of subsistence of the people.

6. Absenteeism, the deprivation on a large scale of the moral and material benefits which the presence of a proprietor among his people ought to bring.

7. The consequent farming out of the land to middlemen, or its administration by agents holding absolute dominion over the tenantry.

8. The maxim of the common law, *Quicquid solo plantatur solo cedit.* In Ireland, as a rule, the farm-buildings were erected and the land was reclaimed, drained, and fenced by the tenant. These improvements the landlord had at any time the power to confiscate by serving a six months' notice to quit. In Ulster this power was modified by custom, having its origin in obvious political and religious causes. In the rest of Ireland it was unmodified.

9. The division and subdivision of holdings.

10. The pecuniary embarrassments of too many of the landlords, a legacy from the improvidence of former generations; thence exaction of high rents and wasteful administration of property through Chancery receivers.

With the two last the Legislature dealt first. As far back as 1825 a law was passed absolutely forbidding and annulling any subletting or subdivision, except with the written assent of the landlord. In 1832 this enactment was altered by making the statutory prohibition apply only when the tenant had agreed not to sublet. These enactments, directed against one small external symptom, did not even remotely recognise the nature of the evil.

In 1848 and 1849, the failure of the potato having brought ruin to tenants and landlords alike, it was thought that to sell out the encumbered proprietors and substitute a new class of landlords would effect all that was desired. The result was bitter disappointment. The new owners, having bought as an investment, were more grasping and even less popular than the old.

Meantime the ideas which have ultimately triumphed were gradually making way and taking root. The Irish Tenant League was instituted in 1850 by the present Sir Charles Gavan Duffy and Mr. Lucas. Eloquence and the most lucid exposition of the case of the Irish tenant failed to obtain redress.

In 1860 the first Act was passed giving to the tenant compensation for his improvements. It is the 23 & 24 Vict. c. 153. It is worth while reverting to its provisions to show the utmost length to which the statesmen of that day thought of advancing. Compensation was confined to future improvements of a definite and scheduled class. A list of the improvements proposed to be made was to be furnished by the tenant to the landlord, and if the latter either chose to make them himself, or forbade their being made at all, in either case the tenant was debarred from any compensation. And the compensation awarded assumed the form of a terminable annuity, calculated to repay the expenditure. The Act became, as regards actual working, a dead letter, yet it was valuable as containing the legislative recognition of a principle.

In another decade Mr. Gladstone passed the Act of 1870, awarding compensation for improvements past and future, awarding compensation for the mere disturbance by the landlord of the tenant's occupation, and, moreover, rendering legal the Ulster custom of tenant right. But it so happened that the years immediately following were years of high prices of agricultural and pastoral produce, and advantage was, in too many instances, taken of this bounty of Providence to insist upon an increase of rent, an increase which was submitted to because, in the feeling of the tenantry, any compensation which could be awarded under the Act formed no equivalent for expulsion from their home. But there arose great heart-burning, bitterest in the favoured province of Ulster. And when the years of plenty ceased, and in 1878–79 the years of famine began, and the widespread suffering of the people found a voice in a powerful organisation, all thoughtful men discovered that a radical change was at hand. The first enactment proposed by the Government was a temporary one, the Compensation for Disturbance Bill. Very many of the tenantry having fallen into heavy arrears owing to the bad times, it was proposed to enact that, in certain of the most distressed and destitute districts in Ireland, when the County Court judge was of opinion that the inability of the tenant to pay his rent arose entirely from involuntary misfortune, eviction by the sharp process of ejectment for non-payment of rent might, if the judge thought fit, be deemed a disturbance within the Act of 1870. The propose Bill went no farther, but it was met with extreme violence

of opposition on the part of the Conservatives, and was rejected by the House of Peers. It is with this Bill that the first of the following speeches of Lord O'Hagan deals.[1] The second speech is on the great Land Act of 1881, whose provisions are too well known to need any mention here. The third is on the Arrears Act, an Act enabling the State to bestow a proportion of the arrears pressing on the poorest class of the tenantry of Ireland, the tenant paying a part and the landlord foregoing the remainder. This statute was successfully administered and found most beneficial.

In all these speeches of Lord O'Hagan on the Land question, it will be seen how entirely his heart went with the cause he advocated.

[1] The speech on the Compensation for Disturbance Bill was never actually spoken. *See* Preface.

[The second reading of the Compensation for Disturbance Bill was moved by Lord Granville in the House of Lords on August 2, 1880, and, after a discussion extending over two nights, was rejected by a majority of 231 to 87.]

SPEECH.

My Lords,—I feel that the excitement which has attended the discussion on the Bill before your lordships creates great difficulty in obtaining a calm and impartial consideration of its provisions. In my judgment, misconception and exaggeration have prevailed about them to an almost unparalleled extent. Passion has been excited: class interests have been invoked: and the hardest of words have been applied to a measure, limited in action and temporary in duration, which, if it had been accepted in the spirit in which it was designed, might have been administered without injury to any one, and with great advantage to the general community, at a time of extraordinary peril and privation.

'Confiscation,' 'spoliation,' 'communism'—these, and expressions like these, have been applied lavishly to blacken the Bill, without, as I conceive, the shadow of a reason; and, if mischief comes of it in Ireland, I am deeply convinced that it will come, directly and exclusively, from the misleading and disturbing misdescriptions of it, persistently suggesting that it involves principles, and may be

employed for purposes, inconsistent with honesty and justice and the settled order of society. My lords, I have some hope that the evil influences created by such representations, and the heat and vehemence with which they have been made elsewhere, may be counteracted by the calm consideration of this House, reducing the measure to its real proportions, and making patent its true operation and results.

My lords, your functions are judicial as well as legislative. You will, I trust, take the Bill as it is, and refuse to put a false gloss upon it for any factious object; and you will not estimate it the less fairly, because you hold the position of great proprietors, and the tenantry of Ireland are not represented here. All the more, on that account, in this calmer atmosphere, you should deal with it in a careful and impartial spirit, and make manifest to the world that neither class-interest nor political prejudice can blind you to the merits of the matter. You have been told to be just, and fear not. I tell you so again. But do not refuse justice from an idle dread lest reasonable concession should be falsely represented as 'a sop to agitation.'

What is the purpose of the Bill, and what are the circumstances in which it has originated? A great calamity has again fallen upon Ireland. Three bad harvests have reduced multitudes to a state of terrible destitution; and, again, the wretched people have been obliged to appeal to the charity of mankind. The calamity has affected all orders of the community, and, whilst I would speak earnestly of the sufferings of the poor, I am not unmindful of the hardships crushing down so many persons of moderate incomes, which have been grievously diminished, and made inadequate to meet the demands upon them for charges and encumbrances, and the maintenance and education of families. There are cases of this kind which command my

warmest sympathy, and which every humane man must be eager to relieve. In the humble occupants of the soil I have, at least, as strong an interest, coming, as I do, from the same good old Celtic stock. Amongst them, I need not say that distress has been spread more widely—immeasurably more! I shall speak of its character and extent immediately; but it is enough now to say that, in multitudinous cases, it has wholly taken from the tenantry any means of paying rent; and that the non-payment has been followed by ejectments, which have driven them from their holdings, and left them to pine in the workhouse or perish on the roadside.

As I understand this Bill, it seeks, under such conditions—where the tenants are in no wilful default and where the consequences of wholesale evictions must be of the gravest social character—to check the harsh and ruthless enforcement of decrees; to prevent a comparatively small class of proprietors from making commodity of a national misfortune, by seizing the homesteads of men who are willing, but unable, to meet engagements made in better times; to prevent the destruction of the little interest they may have in their holdings, and to diminish the difficulties of carrying the law into effect, and the occasions of bringing the peasantry into hostile collision with it:—These are the general objects of the Bill, and, legitimately pursued, with due regard to the rights of all parties, they would seem to commend themselves to the approval of reasonable minds.

It will be for your lordships to say, are not the means it proposes as legitimate as the ends? On the one hand, it does not protect any dishonest tenant refusing wilfully to fulfil his contract or pay a debt he can possibly discharge. On the other, it cannot injure any landlord who will treat his tenant with such common fairness and consideration as would be exhibited under such circumstances

by any kindly and just man—as would be exhibited, I venture to affirm, by most of the members of your lordships' House.

My lords, there are notoriously two classes of proprietors in Ireland. The great majority are just and reasonable, and discharge their duties fairly and well. But there are others, who take advantage of their position to extract from their land in a keen commercial spirit the largest possible profit, with small regard to the living beings who are forced to dwell upon it. To these landlords, from whom considerate kindness and Christian forbearance, in the presence of a terrible visitation, are little to be hoped for, and to them only, it appears to me that this Bill is applicable, and it is for the highest interest, not of the starving tenants alone, but equally of the mass of equitable and reasonable landlords, that to such men it should be permitted to apply.

My lords, there are two questions on the solution of which your decision must depend. Is the Bill just? In the exceptional circumstances of Ireland, is it expedient?

As to both, in the course of this discussion, we have heard much of the interests of the landlord and too little of the interests of the tenant.

On the first question, I ask you to consider carefully the conditions, and the only conditions, on which the Bill can be worked at all. A tenant is sued by ejectment. His landlord has only to show the rent to be due, and this, which as a rule will be admitted, is sufficient *prima facie* to entitle him to a decree. The whole burthen of proof is thrown on the tenant, and he must establish, on sufficient evidence to the satisfaction of a competent tribunal—first, that he is absolutely unable to pay; next, that his inability has arisen from no fault of his own, or any avoidable casualty, but is the direct result of the bad harvest of three unhappy years;

again, that he is willing to continue in his tenancy on just and reasonable terms, and that those terms are unreasonably refused by the landlord, who fails to offer any fair alternative.

My lords, if all these conditions are fulfilled, and if the effect of them be to preserve to the tenant the interest which would have been vested in him if he had been able to pay his rent, and, if so, indirectly, he is kept in possession of his holding, is there any man, with a heart and a conscience, who will say that injustice has been done? Is there a member of this House, who, if a tenant came to him, penniless and starving, eager to fulfil his contract, but powerless to do so, because of the course of nature and the act of God, would cast him from his holding, without the means of life or any shelter save that of a common pauper? If the Bill be rejected, the penalty of involuntary breach of contract is very grievous. For, to the Irish peasant, land is life; and if the loss of his land be not, as it has been thousands of times, the end of his existence, it is to him the end of his hope and happiness. He has no resource in prosperous manufactures or remunerative labour on the soil, and, accordingly, he clings to his holding with desperate tenacity. Therefore, it is wise as well as politic to be gentle with him, and to spare him for the coming of better days. He suffers still from the errors and the oppressions of past generations; and when the Irish peasants are lectured on their low condition by the noble earl who moved the rejection of this Bill, and told by him that they must be left without help to rise from it, and be cast on their own miserable resources, I am compelled to remind him that their present deplorable state is the lamentable result of England's cruel and unjust behaviour in other times, when, ignobly jealous of her weaker and less favoured sister, she destroyed her industries, ruined her trade, and

subjected her to a land system without its parallel on the face of the earth.

This is happily a tale of the past. Sounder principles and better feelings govern the legislation of our time; but it has its mournful sequel in the utter destitution which now, whenever the crops fail, afflicts multitudes of our people, especially those who dwell on the mountains and along the seaboard of the West. These evil effects of former wrong have been referred to in fitting terms by the noble marquis opposite[1] in a speech which gives assurance of his future distinction in this House, and they should be remembered as matters for regret and reparation, when we come to deal with the tenantry of Ireland, amongst whom they have done so much to make eviction equivalent to ruin. My lords, you in England know little of the cruel consequences which eviction involves to the hundreds of families and the thousands of individuals who at this moment are liable to it. Here there are alternatives for honest labour; and the tenant is not driven to choose between death and the poor-house.

My lords, is there injustice in giving some protection, under such circumstances, to a perfectly innocent man, when a hard landlord, taking advantage of an adverse season, seeks to grasp his little holding and any interest he has in it under the law? I do not enter on the controversy whether the Irish tenant has derived from the Land Act a 'property' in the soil. He has an interest, he has a right, of which his landlord cannot deprive him, on ordinary occasions, without paying a penalty for disturbance. Our Legislation implies and involves the recognition of such an interest, and that interest this Bill seeks to preserve for the reasonable tenant against the unreasonable landlord, who seeks to work a forfeiture of

[1] The Marquis of Waterford.

it because the tenant, stricken with penury by a fearful visitation, has failed to do an impossibility by paying rent he has no power to discharge. Such forfeiture, in such a case, no good landlord would dream of enforcing; and can there be injustice in compelling the bad landlord to do that which the good landlord would surely do of his own accord?

Is there communism in this, or spoliation? Is there anything but simple justice, such as should prevail between man and man, without the pressure of any penalty?

My lords, before you pronounce the Bill unjust, remember that legislation to the same effect, but far more stringent and sweeping, received the sanction of the Cabinet which prepared the Land Act of 1870, including some of the most distinguished members of your lordships' House, and was accepted by the House of Commons without challenge or discussion. It conceded a right such as this Bill concedes, without the safeguards which it contains; without any justification in temporary distress, and without any limitation as to the area of its action or the time of its continuance. This House did not accept the provision, so framed by the Cabinet and approved by the House of Commons; but one of the main grounds recorded for its non-acceptance was that the Judge of the County Court was authorised to give the compensation, 'for special reasons,' which were not defined, and it was held, therefore, that the discretion so committed to him would be dangerously large. But this Bill does, in the clearest terms, define the reasons, and therefore that objection fails to apply. A further objection, grounded on the necessity for maintaining contracts, was made to the introduction of that provision into the Act of 1870, but at that time the peculiar exceptional circumstances relied on in support of this exceptional and temporary measure had no existence.

A compromise was effected. The clause in question was not insisted on by the Commons, as, by insisting on it, they might have put the Land Act in peril, but the proposal and the manner of its reception come in aid of the argument or the justice of the measure with which we are dealing, when the change of circumstances is taken into account. And the power vested in the judge of giving compensation in certain cases, when the rent should be 'exorbitant,' goes far to sustain the principle of the Bill, as it involves the discretion to decide upon 'exorbitancy'; an act as nice and difficult as any which the Bill would require him to perform.

My lords, it has been said that this Bill, as departing from the provisions of the Land Act of 1870, is a breach of faith with the landlords of Ireland. It seems to me to be a development, and not a contradiction, of those provisions. The Land Act was designed to check improper evictions by putting a penalty on them. That such object should be now carried farther under new exigencies which were not foreseen, and that this should be done for the public interest and to meet the requirements of the public service, is no breach of faith: the alleged undertaking was never given, and was one which no Minister or Parliament had power to give.

My lords, if the Bill be just, is it not expedient, in the peculiar circumstances of Ireland? Those exceptional circumstances have been already exceptionally dealt with in many ways. Hundreds of thousands of pounds have been lent to landed proprietors. Outdoor relief has been given in contravention of the principle and practice of the Irish Poor Law; ample grants have been made for the formation of public works, and, by these and other measures, the Government and the Legislature have demonstrated the terrible gravity of the distress which may come

upon the country. It has awakened the sympathy of the whole world and has been relieved by open-handed charity. But the misery of the times has deprived multitudes of Irish tenants of any means of paying their rents, and the result has been an inordinate and alarming increase in the number of ejectments. There has been great controversy as to the distinction between actions on the title and actions for non-payment, but the undisputed figures show a great and growing increase, and this measure has been pointed not to the present merely, but also to the probable future. The bill is a measure of precaution, and seeks to ward off danger by providing against it.

I do not concern myself with the details of the statistics which have been presented to the House. It seems to me quite enough to point to the number of ejectments in the last three years:—in 1878, 743; in 1879, 1,098; and, from January until June in the present year, 1,112.

This increase was mainly in ejectments for non-payment of rent, as may be seen by referring to Dr. Hancock's Judicial Statistics of Ireland, presenting a summary of the returns of the sheriffs.[1] It was so through all Ireland, and in every one of the four provinces.

The figures demonstrate the existence to an alarming extent of extreme distress, and suggest sad thoughts of the wretchedness which must have fallen on so many families, thrust out of their humble homes. It is said that many of them have been restored to their holdings as caretakers. That undoubtedly is true. But what is a caretaker? Under the Irish Landlord and Tenant Act of 1860 he is absolutely at the mercy of the landlord. He has no property in the holding which was once his. He may be summarily driven from it, by the order of a magistrate, at any time, and find his only refuge in the workhouse.

[1] *Vide* Judicial Statistics, p. 72.

And I observe, from the Judicial Statistics, that this power to recover possession from the overholding caretaker was lavishly employed in 1879. For the present year, I find no return. Therefore this plea, in mitigation of the hardship of eviction, is illusory and idle. The position of the caretaker is one of miserable dependence and utter uncertainty.

The increase in ejectments is, I repeat, great, and it is continuous; it is manifestly attributable to bad seasons and the penury of the people; and if all I have said as to the justice of the measure have force, then in such circumstances it must be expedient as well as just. It is at once a measure of plain equity for the relief of the distressed who are innocently suffering, and a measure for the preservation of peace and order, which have been imperilled and disturbed by the free and probably harsh application of the machinery of the law. At considerable expense to the community, at great risk of bodily injury and even loss of life, large bodies of the constabulary force have been employed in enforcing the process of eviction; and if the necessity of such proceedings can be diminished without injustice, if restraint can be put on the landlord who is disposed to a cruel and reckless enforcement of his legal right; if the tenant who is willing to fulfil his contract, but utterly unable to do so, is given some temporary advantage which may tide him over his temporary difficulties, the interests of justice and humanity and public order will be at once promoted, and the permanent well-being of the community advanced. The law must be enforced at all hazards, and without regard to consequences; its supremacy must be maintained, and the rights it recognises must be insisted upon to the uttermost; but if, without compromise of its authority, dangerous collisions may be avoided and public disturbance made to cease during these days of sorrow and privation, will not important aid be given to the administration of

the Government and to the promotion of the public peace? If you can fairly diminish penal infliction for involuntary breach of contract by harsh ejectments, and save from ruin those who have meant to do no wrong, and so make the execution of the law more easy and less dangerous, will not a great advantage accrue to all classes of the community, and not least to the many landlords who perform the duties whilst they assert the rights of property?

Note it well, my lords. The Irish proprietor will retain, should this Bill become law, all the powers of enforcing his demands which he now possesses, save one which the English landlord does not enjoy; and even this he will continue to retain in a modified form, and will recover, in its integrity, after the lapse of a very few months. He will retain the right of action; he will retain the remedy by distress; he will retain his priority over the execution creditor. It is monstrous to say that the Bill will suspend the payment of rent for two years, or for two hours. Some of the Irish tenants may have been taught that it will; but, if they have been, the gross exaggerations and persistent abuse of the opponents of the Bill were to blame, and not its authors. The tenant's contract remains; the landlord's right remains; the landlord's remedies remain; save the unqualified power of evicting summarily a tenant who is willing to pay but cannot, and cannot solely from the unkindly operation of the elements.

My lords, the Ejectment Code of Ireland is exceptional and peculiar, and was established originally in derogation and defiance of the old Common Law, which has been so long the boast of the English people. The mass of the Irish tenants—seventy-seven per cent. of them—are tenants

from year to year. They hold a position in many ways entirely different from that of their fellows in England, and especially because improvements are made by English landlords and maintained by them, whereas in Ireland they are made and maintained by the occupiers of the soil. And the laws of the countries as to evictions materially differ also. Under the Common Law, ejectment for non-payment of rent was permitted only when there was a written instrument of demise, which contained a proviso for re-entry on non-payment. That ancient law guarded jealously the possession of the occupiers of land; and such a condition was construed in favour of the tenant, because, as Lord Coke says in a famous passage: 'Conditions are odious in the law, and are, therefore, to be taken strictly.' There were great difficulties in enforcing the proviso. For that purpose there must have been an entry on the land, a formal demand of rent on the day on which it became due, at a convenient time before sunset, and of the exact sum—'not a penny more or less.' This was the state of the law in Ireland also. But, by a series of Acts, from the 11 Anne, cap. ii. to the 25 George II., cap. xiii., the Irish Parliament thought proper to alter it essentially in the interest of the landlords, and to do away with the protection which, in England, it secured to the tenants. I shall not trouble your lordships by going through the details of these various Acts, which constitute the special code of Ireland. You will find them referred to and considered in the case of 'Delap *v.* Leonard,' in which I was counsel in my earlier days. But I shall read to you a sentence from the judgment of Chief Justice Pennefather in that case, which truly describes the whole course of the partial legislation to which I have been referring:—

I look upon the legislation on this subject as a progressive code, having the benefit of the landlord in view and giving, in each successive Act, additional remedies to the landlord.

It is perfectly true that the Irish legislation was throughout 'for the benefit of the landlord.' Act after Act trampled on the Common Law, and proved, as the Chief Justice further said, that 'it was not the object of the Legislature to have any regard for its preservation.' That Common Law continued to exist and find wholesome enforcement in this country of England, and it is vigorous and active at the present hour. Still, though the Irish Legislature took away the tenant's safeguards of the olden time, it did not extend the change to parol tenancies from year to year; and not until the passing of the 14 & 15 Vict. cap. lvii., followed by the 23 & 24 Vict. cap. cliv., was that novelty introduced into Ireland. The law, as it now stands, enables the Irish landlord to proceed to his ejectment, without notice or formality of any kind, the day after a year's rent becomes due. This is a privilege which has never been enjoyed or claimed by the landlord in England. He has been content with his right of action, his right of distress, his right of priority, and his right to evict on a notice to quit, which was wisely and humanely required by the Common Law, in order to give the tenant from year to year, and his family, some little time for discovering a new homestead after his landlord had determined to turn him out of possession.

Well, my lords, this peculiar power, this anomalous power, this novel power, this comparatively despotic power, which has had existence only for a few years, is the only power which the Bill attempts to restrain or modify in the least degree. I repeat it, because I am anxious that your lordships should clearly understand this part of the case—the harsh landlord retains his right of action, of distress,

and of priority, and is only asked conditionally, partially, and for a brief period, to forego a privilege unknown to the Common Law, unknown to the English proprietor, and which is the creation of very recent statutes of very dubious humanity or policy. If the legislation be exceptional, so is the authority which it affects; and that authority he is not required to relinquish absolutely, or for any lengthened period, but merely to qualify its exercise under circumstances of great public calamity, in mercy to persons who have been its victims, and cannot help themselves, and for a very little time.

Is it right or reasonable that, for such a course, such indignation should be roused? Is there anything very wrongful or very harsh in asking of the Irish proprietors to make a sacrifice so small—and to the far greater number it would be absolutely no sacrifice, for the Bill would not touch their interests—for the sake of charity to poor tenants, who are blameless as they are suffering, and of that social peace and order which the Government of the country declare it will essentially assist them to maintain?

In Ulster, by a custom validated, under provisions which this House has approved, a tenant is not deprived of his claim to compensation, even though his rent is in arrear, but is in the precise position which would be that of a tenant in one of the scheduled districts if this Bill passed into law, receiving compensation under its stringent conditions, although, through the deficiency of the harvests, he had been unable to discharge his obligations to his landlord. Is it an extravagant demand that that which is the permanent right in Ulster should be conceded elsewhere, when abnormal distress has created disability, and the demand of the concession is made in the interests of the entire community?

My lords, if Ulster gives a precedent which justifies the proposals of this Bill, the law of Scotland justifies them still more, so far as their intrinsic equity is concerned. That law adopts the principles of the Great Roman Code, one of the noblest creations of the wit of man —which for ages governed Imperial Rome and its wide dependencies, and at this moment regulates largely the jurisprudence of the greatest nations of the modern world. If the Irish tenant, to whom this Bill designs a temporary and modified protection, held under a Scotch landlord, without any special agreement, in the very circumstances which would enable him to claim the benefit of the proposed legislation, he would be exonerated from his liability for rent. His total inability to pay arising from a casualty not caused by him, and utterly beyond his control, would relieve him from that liability. Mr. Erskine, a writer of the highest authority, has thus stated the law in his Institutes; and it has been applied decisively in the tenant's favour in cases of inundation and injury by alluvion. Of course I do not refer to this doctrine of another code as practically shielding the Irish tenant, who suffers total loss from, as Mr. Erskine says, 'an occasion not imputable to himself.' He has made his bargain under the English law, which does not admit of such relief under such circumstances; but when we are considering the equity of a new piece of legislation and the reasonableness of the unqualified abuse it has received, the opinions of other nations and other ages, solemnly embodied in their legal systems and enforced with the general approval of mankind, should not be altogether without influence.

My lords, I fear that this argument has a foregone conclusion. Even if it were not, as I think it is, satisfactory in favour of the Bill, I should hold, with the noble earl beside me, that the rejection of it, now that it has reached

this House, would be unfortunate in a high degree. The ancient axiom, '*Fieri non debet; factum valet,*' should make us pause, even if we doubt as to its merits; but, for myself, I think it is a just Bill and an expedient Bill, and I should lament its defeat as a calamity to Ireland.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, AUGUST 1, 1881, *ON THE SECOND READING OF THE IRISH LAND BILL.*

INTRODUCTORY NOTE.

Lord Carlingford moved the second reading of the Bill; he was followed by Lord Salisbury—who recommended the House to take the wiser course of not voting against the Bill, but of attempting to remove from it in committee some of its more objectionable provisions, 'and then leave the experiment of the measure to the responsibility of Her Majesty's Government.'

After Lord Salisbury Lord O'Hagan spoke.

SPEECH.

My Lords,—On one point, at least, I concur with the noble marquis who has just addressed your lordships. This is an important measure. It is, in my judgment, but in a sense very different from that in which it was so described by the noble marquis, the most important measure which the Imperial Parliament has offered to Ireland since the Union. It is great in its conception, complete in its details, and must be far-reaching and enduring in its beneficent influences. The noble marquis had no right to assert that the clauses which he appears to approve, as to the creation of a peasant proprietary, have shrunk in their proportions during its passage through the other House. On the contrary, they have been made more effective, and more ample means have been supplied for their useful operation.

The Marquis of Salisbury.—My statement was that they had been urged less strongly as the debate proceeded.

Lord O'Hagan.—The House will judge whether the shrinking has not been in the assertion of the noble marquis. I am sure your lordships understood him to convey that the scheme itself had been emasculated through the default of the Government. The very contrary is true. Its scope was enlarged and its efficiency increased by any amendments which it underwent. But if the noble marquis only meant to say that it was advocated in arguments less strongly at one time than at another, his statement is harmless and needs no reply.

Again, my lords, the noble marquis affirmed, in opposition to the statement of my noble friend the Lord Privy Seal, that the Richmond Commission gave no countenance to the provisions of the Bill. I shall have occasion, by-and-by, to call your attention to the exact terms in which that Commission formulated its judgment as to legislative intervention between landlord and tenant; but I content myself now by undertaking to show that it adopted the cardinal principle on which the most special and characteristic provisions we are considering have been based; and that those who adopt its doctrine are estopped from contending, with the noble marquis, for absolute freedom of contract, in the peculiar circumstances of Ireland, or condemning such interference with it as this Bill will undoubtedly accomplish.

As to the observations of the noble marquis about the constitution of the proposed Land Court, I believe his opinion would be different if he knew the members of it. No man in Ireland has the slightest doubt of their capacity, integrity, and determination to be absolutely just to all who may come before them.

My lords, as the Bill is of rare and exceptional im-

portance, so it is presented to you with many titles to your most favourable consideration. It is urged upon you, by the apparently universal admission that the necessity for change is imperative in the actual condition of Ireland, and that stringent measures are needed to work a fundamental improvement. It has passed the Commons by great majorities—the clause especially, which is its kernel and its life, having been carried by the greatest of them all, in spite of violent and protracted opposition. The mass of the people of Ireland—her farmers, her traders, and her professional classes—look to it with eager hope, and would regard the defeat of it as the direst of calamities. A great body of the landed proprietors, suffering, struggling, and unhappy, cry out for relief. And though many of them may deprecate the change which is proposed, and dislike the abridgment of their power and the establishment of the new relation with their tenants which they believe it to involve, very many recognise these things as inevitable, and welcome a *modus vivendi* with their people which may relieve them from present embarrassments and future perils, and give them a fair chance of reconciling an agricultural population, now largely imbued with hostile feelings and dangerous discontent, by the concession of the secure enjoyment of the fruits of their industry.

These considerations should tend to attract to this large and generous measure the approval of your lordships' House. But there are others which render the task of anyone who advocates it difficult and ungrateful in this place and before this assembly.

In the front of the controversy, we have the argument presented by those who condemn the Bill as a violation of economic principles and a repudiation of accepted dogmas, which are dear to the economic mind. A distinguished member of the Richmond Commission takes this ground:

and, though he assents to its preliminary report, blows a strong counterblast against its recommendations, so far as they would lead to a dealing with Ireland in any special way, because of her special condition, or anticipate, for the present salvation of a living people, the slow and uncertain work of coming generations. And, certainly, the Bill does antagonise the rules of conduct which, in a normal state of things—where there is possibility of free contract and unchecked development of social forces—might best conduce to the moral and material well-being of a community. Beyond doubt it does hamper action by its valued rents, its judicial tenancies, and all the machinery by which it essays to regulate the relative rights and duties of the landlord and the tenant, so as to promote the advantage of both without the overmastering control of either. But economic principles, however sound, must be applied according to the exigency of social circumstances. What may suit one period of a nation's history may be quite out of place in another. We must not press sound theory to disastrous conclusions; and hold it too sacred to give it varying application to the varying phases of human life. The wisdom of old held it folly

'Propter vitam vivendi perdere causas.'

The conditions of possibility and feasibility underlie all wise application of the rules of the economist; and if, in this matter, we seek such conditions in Ireland, we must be prepared to accept them with many shortcomings. The perfect freedom of contract, which is most desirable in the healthy state of a community, is declared by many witnesses, and on the authority of her Majesty's commissioners, to be non-existent among Irishmen when dealing with the soil. And so it must be when the competition for land is excessive, and the supply practically inadequate; and when

those who possess it can dictate, without control, the terms of tenure of those who must obtain its occupation, if they would exist at all. For this reason the Bessborough Commission and the Richmond Commission, and a great body of Irish landlords, have recognised the propriety of an interference with social relations and the transactions of social life, only justified on the assumption that certain classes in Ireland require, on the one side, the protection, and, on the other, the restraint which, as between people acting on equal terms, and with full power to guard their mutual interests, would be inadmissible. And if that be so, the application of abnormal remedies to abnormal disorders becomes right and reasonable; and in its best development, economic science approves the divergence from its common formulas and rigid rules, the fit and proper outcome of another state of things. The evil treatment of Ireland has not been inflicted on economic principles—and, strictly applied, they will not work her cure.

My lords, I turn to another class of objections, which may naturally be supposed to have special influence with many of the members of this House. I do not believe that the changes which the Bill contemplates will affect injuriously the material interests of Irish landlords. That, of course, is a debatable opinion. But I am satisfied that, if the measure is worked fairly and successfully, they will enjoy, when the excitement and confusion of the hour have passed away, rents at least as ample as they now receive, which will be paid more cheerfully and more securely. The tenant, confirmed in the safe possession of his farm, ought to exhibit, according to all our experience of human nature and human affairs, an honest readiness to fulfil his engagements, which he will cheerfully recognise as just and reasonable when he is no longer the victim of arbitrary rent and capricious eviction.

But it is said that the landlord will have diminished power, though he may not have diminished wealth: and to most men, undoubtedly, the loss of power is a privation and a pain. He will no longer be able to exercise unlimited authority in dealing with his dependants. Their reciprocal rights will be defined, and over both an equal law will rule supremely. What are regarded as the amenities of proprietorship—the license to regulate the arrangement of estates, the authority to control the fortunes of their occupiers, the facility of exercising benevolent supervision and patriarchal care—these and other prized appanages of territorial greatness will, it is urged, be deteriorated or destroyed by such a Bill as this. And we can scarcely wonder at the reluctance with which the change is regarded; especially, perhaps, in Ireland, where, for a very long time, the aim of legislation was to amplify the authority of the landlord and abridge the privileges of the tenant; and a code was laboriously constructed, in derogation of the Common Law, which was declared by Chief Justice Pennefather in a famous judgment, pronounced in a case in which I myself was counsel, to have been framed altogether for the landlord's advantage—giving him prerogatives which have never been extended to the proprietors of England—and leaving out of account all consideration for the tenant. It is not unnatural that there should be revulsion and repugnance on the part of the possessors of those prerogatives, when a system is assailed which permitted high-handed action in the clearances of the past, and keeps the power which made them still subsisting, although comparatively dormant, in the happier present.

But, on the other side, may it not be suggested that the events of later days have already shortened the landlord's arm and limited the sphere of his dominion? The Act of 1870 was wholly inconsistent with his pretensions of former

days; and those who were parties to that measure committed themselves to the principle by which this Bill is justified. They admitted a tenant's interest in the soil before unrecognised, and guarded its enjoyment by serious penalties against disturbance. And may it not be fairly asked whether, whilst there has been this general limitation of the landlords' rights, it has acted to their real disadvantage? Do the proprietors of Ulster wield less legitimate authority, because of the peculiar restraints of tenant-right, than their brethren in the other provinces, who may hereafter be subjected to the restraining operation of that great privilege with which the North, for many generations, has been so happily familiar? The answer must be in the negative, and should tend to diminish exaggerated fear of change. But, in addition to these considerations, may I not observe that the alteration in the territorial system of Ireland, of which very many of her landlords and the vast majority of her people recognise the inevitable necessity, will not be without its compensation to those who most denounce it, if the new condition of things promotes peace and order, establishes the supremacy of the law in the affections of the community, by giving them a new sense of security and a new impulse to improvement, and supplies to the proprietors who live amongst them, in the contemplation of their increased prosperity, a recompense for personal sacrifices of sentiment and pride.

Rightly considered, the true interests of the proprietor and the occupier are identical. They are bound up together in a thousand ways, and, in a well-constituted society, the law which serves the one ought to be fruitful of advantage to the other. To neither is there pleasure or profit in their alienation; and the Providence which has made us, in our various positions, dependent for our happiness on mutual service and goodwill, must bless a legislative

effort, designed to harmonise them by recognising right, forbidding oppression, and doing equal justice.

But, my lords, there is another difficulty in the way of your acceptance of this Bill more formidable than either of those to which I have referred. You are asked to deal with a diseased and discredited land system in Ireland: and the great majority of your lordships will naturally look at it from an English standpoint. But that system and your own are not the same in their character, or their history, or their working amongst the communities in which they respectively exist. That of England belongs to a people fortunate and contented in its happily graduated classes; in its diffused wealth; in its diverse and multiplied occupation for every form of human effort; in its industrial habits, and its habits of order and obedience to authority—the growth of institutions 'racy of the soil,' which long generations have loyally supported; with which they have been substantially satisfied; and of which they are proud and jealous, as they ought to be.

The Irish system belongs to a people different in race, in tradition, in training, in resources: a people whose main and generally sole reliance, in the absence of other opportunities of industry, is on the land; to whom that land is life, and the loss of it destruction; and from whom, until a period comparatively recent, permanence of tenure, security for improvements and encouragement to progress were too much withheld by cruel practices and anti-social laws. It is not easy for you to judge rightly of such a people, with such a history, from your English experience; and when proposals are made, suggested by its hapless antecedents and peculiar state, they may seem, not unreasonably, inexpedient and dangerous to those whose own condition of prosperity does not invite or justify their application.

This is, undoubtedly, a serious obstacle in the way of

your calm and dispassionate consideration of the great question which is before you. But whilst you may shrink from the drastic remedy offered for the ills of Ireland, lest in its action it should rebound upon yourselves, remember the distinction to which I have called your attention. Remember that the state of things, which has made of Ireland a place of unrest and unhappiness, is the reverse of that with which, whatever its shortcomings, you have been blest in England. Remember that the tribal tradition which has claimed for the Irish tiller of the soil a property in it is substantially asserted by laws which you have accepted for his benefit, but which never have affected the British landholder. Remember that the agricultural improvements which really base the tenant-right of Ulster, and form the equitable claim for its legislative protection, are the tenants' work in Ireland and the landlords' in England. And remember that the relations of reciprocal dependence and protection, which identity of blood and faith have maintained amongst your various classes, have not been permitted, by the course of their sad history, to exist among Irishmen at all in the same degree. Remembering these things, and other things like them, you need not fear to do justice and extend mercy, from any apprehension lest the redress of Irish grievances should entail the disturbance of English institutions. Rather dread that an unanswered cry for necessary change in Ireland should suggest discontent to the English mind, and make familiar here the assertion of demands to which you are not prepared to yield concession. Be sure that the righting of real wrong in Ireland will work no evil to you, if amongst yourselves such wrong does not exist.

Many Englishmen, prizing their ecclesiastical system, were full of fear lest the disestablishment of the Irish Protestant Church should involve the downfall of their

own. Has not that fear proved groundless? Does not the Anglican Church Establishment stand now more firmly, because it no longer bears the odium which had properly accumulated on its branch in Ireland? Can it not, in a day of peril, more confidently claim the civil support of those who, though they reject its dogmas and refuse obedience to its discipline, think that it should be maintained at present as knit up with a Constitution which is of priceless value to all law-respecting and freedom-loving men, and as opposing a breakwater to the surging flood of infidel opinion which threatens to sweep away the foundations of the Christian faith?

My lords, you have been told, in eloquent words, that the case of Ireland and the case of England are not to be distinguished, on historic grounds, for any purpose of the present argument. The latest confiscation, it has been said, is two hundred years old; and we should deal, it seems, with actual facts, as if the past of the Irish people had been obliterated from the memory of mankind. No one is so foolish now as to dream of restoring the tribal system, or reviving tribal customs, or asserting tribal rights. And a discussion as to the comparative merits of the Brehon Laws and English Jurisprudence is wholly superfluous and out of place. Reference to the crimes and errors of other times is not justifiable when it is aimed to awaken revengeful feelings or perpetuate national antipathies. And if we ever 'dig from the graves of memory their forgotten dead,' we may fitly do so only to account for the anomalous and abnormal condition of Ireland, and indicate that the confiscations and the long misrule which ruthlessly followed them, and which all good men would willingly bury in oblivion, do largely explain the causes of that unfortunate condition and furnish matter for regret and reparation, of which a great and generous people should not be forgetful in these better days.

My lords, we are compelled, by speeches such as that to which I am referring, to say that the Irish masses are largely what they are, because of the treatment of their forefathers; when intolerance of Irish prosperity was notoriously the animating spirit of the English people; when Irish manufactures were selfishly and deliberately crushed down by English power; when a series of monstrous acts excluded Irishmen from the benefits of commerce with the colonies; forbade them to export their cattle; destroyed their flourishing woollen manufacture; deprived at once of the means of prosperous existence 32,000 families; drove men of enterprise and energy to seek employment in England, America, and on the Continent; and, in the words of a distinguished historian who has done noble service to his country (Mr. Lecky), 'crushed every form of Irish industry.' These things utterly impoverished the working classes, and reduced the island to such a state of degradation, that Swift, in his 'Proposal for the Universal Use of Irish Manufacture,' described it in these emphatic words: 'Whoever travels through the country, and observes the face of nature, or the faces, and habits, and dwellings of the natives, would hardly think himself in a land where either law, religion, or humanity was possessed.' When we were told of the confiscations which drove the ancient Celtic people to the inhospitable bog and the barren mountain, we should also have been told of the barbarous laws which perpetuated these evil influences and systematically forbade trade to exist, or industry of any kind to flourish; and of that infamous code which completed the work of ruin, by forbidding the Catholic people to have any permanent interest in the land of Ireland.

My lords, it seems to me idle to say that we do not even now see the sad results, still shadowing her destiny, in her lack of trading enterprise and commercial resources,

and in the enforced reliance of her peasantry in many districts, on an uncertain climate and an often unfruitful soil, where multitudes habitually touch the 'perilous edge' of starvation, and are sure to sink to it, in helpless despair, on the occurrence of an unfavourable season. These things have had their origin greatly in the errors of days long gone, and of a policy long obsolete. But

> Sorrow tracketh wrong,
> As echo follows song,
> Ever, for ever!

And for nations, as for individuals, it is hard to emerge from a fallen condition. The evil past may give us light and guidance in preparing for the future; and the contrast between the historic fortunes of England and Ireland renders it needless to assume, that the treatment of communities, which have grown up under influences so wholly diverse, must necessarily or properly be the same.

I have dwelt so much on the considerations which are urged, *à priori*, against the adoption of this measure, because I believe that, if their deterrent force be removed, its provisions will commend themselves to your lordships, notwithstanding the novelty of many of them, as fairly dictated by reason and experience, suitable to the circumstances of the country and the time, and not more than adequate to meet their pressing exigencies. If, on suggestions such as I have ventured to offer, you can be induced to conclude that neither true economic principle, nor probable injury to any class, nor danger to English interests from the removal of Irish abuses, furnishes valid ground for the rejection of the Bill, you will be prepared to consider it on its merits, and to hear me whilst I speak of them, very shortly.

The measure comes before you on the impulse of a great necessity, compelling action of a serious kind. The Land

Act of 1870, great as I believe its benefits to have been, failed fully to accomplish the objects of its authors in preventing the injurious and inequitable raising of rents and the capricious use of the power of eviction. That failure could not have occurred, as the evidence of many witnesses demonstrates, had its provisions been loyally received, and administered in the spirit in which it originated. The alarm and discontent which it produced in Ulster and other parts of Ireland created the necessity and the demand for further legislation. It was precipitated by three successive years of decadence and suffering, which culminated in the great distress of 1880, and made Ireland once more the mendicant of nations—an object of commiseration to the world. Of these sad circumstances this measure is the outcome, and it was meant to be so comprehensive in its scheme and so thorough in its action, as to accomplish lasting improvement, and, if possible, to anticipate and prevent further complaints and further agitations.

The Bill, in addition to its clauses as to peasant proprietorship and emigration, aimed to secure three things to the tenantry of Ireland—fair rent, free sale, and increased security of tenure. Take these things consecutively. In the abstract, all are for fair rents. The landlord professes to ask for no more; the tenant, save in the late time of abnormal excitement, has always declared himself willing to pay no less. Landlords and agents, before the Richmond and Bessborough Commission, have boasted of the general reasonableness of Irish rent, and, in many cases, expressed their belief that the award of arbitrators, or the decision of a court, would issue in its increase and not in its diminution. And there would seem to be no actual hardship, as there would be no ground for complaint of monetary loss, if a perfectly impartial tribunal should accurately determine the amount which ought fairly to be paid.

The demand for such a tribunal has been loud and long, until it has swelled to the proportions of a national appeal. It has been founded on the allegation of harsh and repeated additions to rent, resulting, as to Ulster, in the deterioration and destruction of the tenant-right, which custom has established and law has confirmed; and, as to Ireland generally, in a want of security, creating heart-burnings and discontents, antagonising profitable improvements, and obstructing social progress. The case for some intervention between the owner and the occupier to prevent these evils is, surely, very strong. Its force has been recognised by both the Royal Commissions, of which you have heard so much. It is maintained by hosts of unimpeachable witnesses—not tenants only, but, also, proprietors and agents of high character and great intelligence. It has had the support of Irish landlords, of the most influential class, at public meetings, held before the Bill now on your lordships' table was devised; and it has received countenance and favour from thinking men of great authority, to whom other provisions of that Bill are obnoxious and distasteful.

I shall cite, on this branch of the argument, the opinion of Mr. Kavanagh, a gentleman entitled, on every account, to the respectful attention of this House, who differed from his colleagues of the Bessborough Commission on other matters, but as to this, the primary and most important question to be considered, expressed himself in these terms:—

The weight of evidence has, however, proved that the question of rent is at the bottom of every other, and is really, whether in the North or South, the gist of the grievances which have caused much of the present dissatisfaction. I think that the evidence suggests the conclusion that the Land Act, as now in force, does not afford sufficient protection to the tenants against the unjust exercise of the power to raise rents in unscrupulous hands; and, although I admit that in adopting the

suggestion of a system of arbitration for the settlement of disputes as to rents and other matters of valuation, I am endorsing an interference with rights of property and freedom of contract, open to grave economical objections, and which to the great majority of landowners who have not abused their powers, will, I have no doubt, appear unwarrantable, yet, having regard to the mischief which the unjust exercise of the power has occasioned, I can come to no other conclusion than that, in any proposed alteration of present rents, whether at the instance of landlord or tenant, when the two parties cannot agree, the question should be left to arbitration, with final reference, in the event of the arbitrators being unable to agree upon an umpire, to a Land Court, or Commission, which should be appointed for that and other purposes.

That is the opinion of an Irish landlord of strong Conservative views, and as capable as any man living of sound judgment on such a controverssy, with a view at once to his own interest and that of his country. And how far Mr. Kavanagh's opinion is in harmony with that of the best representatives of his class will be apparent when I read to your lordships the summary of the proceedings at a meeting held in Armagh, which I clipped from a newspaper long before the Bill came into existence :—

A meeting of landlords and other leading Conservatives has been held in the Tontine-rooms, Armagh, to express their opinion upon the Land Question. Sir James Stronge presided, and among those present were Lord Mandeville, Mr. Maxwell Close, M.P., Mr. Synnot, D.L., the Rev. Thomas Ellis, Mr. R. B. Templer, J.P., and about fifty other gentlemen, agents, and others connected with land. The meeting adopted a series of resolutions recommending 'that a Court of Arbitration should be established and paid by the Government; that it shall not be possible for a tenant to be evicted, save only in cases of subletting, or division of land in any form, or for non-payment of rent; that it shall not be lawful for the rent agreed upon when entering into possession to be altered afterwards on any change of tenancy, except by mutual consent, without the sanction of

the Court of Arbitration; that free sale should be allowed in all cases, giving the landlord the approval of the tenant, and that any dispute that may arise as to the price should be referred to the Court of Arbitration; that all disputes as to the raising or lowering of rents and the value of land should be referred to the Court; that the Government should purchase estates, as cases may arise, to enable them to establish peasant proprietors.' The meeting was addressed by Mr. Close and the Rector of Killylea, both of whom expressed their desire that the Government would bring in a Bill which they could support.

There is nothing in the Bill more stringent and specific as to authoritative interference with the settlement of rents than the resolutions of these Conservative proprietors of Ulster, proclaiming the conclusions to which their large experience and sound sense and regard to their own interests had led them.

And in entire accordance with these views are the matured judgments of the two Commissions, which have both dealt deliberately, after full investigation, with the cardinal proposal of the Bill.

The Bessborough Commission unanimously recommend the formation of a Land Tribunal for the adjustment of rent:—

> If a dispute arises either through the desire of the landlord to raise the rent, or of the tenant to have it lowered, to an extent which the other party will not accept, some procedure in the nature of an arbitration, or of a fair trial at law, must be provided for its settlement.

My lords, this Commission has been impugned in harsh and scarcely becoming language. It is said to have acted hastily and unfairly. Hastily it was obliged to act, in view of the pending legislation which its inquiry was designed to assist. There may have been ground for complaints as to some of the rebutting matter. But I protest against an impeachment of the entire evidence which it received, by

the easy process of assailing the statements of a few witnesses—three or four out of some five hundred—and ignoring the enormous mass of testimony of judges, proprietors, tenants, and agents, which sustains the general inferences embodied in the Report. And I protest, also, against gratuitous sneers at Ireland, contemptuous reference to Irish witnesses, and discourtesy to the Commissioners themselves, who, though they are merely Irish, are, every one of them, men of unstained honour and exceptional ability, and ought to have been dealt with respectfully, at least because their onerous and unrequited task was performed under Her Majesty's authority. Men more incapable of acting with conscious unfairness it would be impossible to find; and your lordships will be slow to condemn their labours and disregard their counsels, because, in some instances, they were obliged to report evidence which may be foolish or may be false. They all reached a conclusion in favour of the valuation of rents by a competent court, and that conclusion is persuasively supported, not merely by the opinion to which I have already invited your notice, and by the general consent of the great majority of those who were summoned before them, but also by the declaration of the kindred Commission, unanimously pronounced and open to no impeachment of any kind. This is their emphatic finding after a full and fair inquiry pursued in Ireland :—

Great stress has been laid upon the want of security felt by an mproving tenant, which, it is alleged, limits not only the number of persons employed in agriculture, but also the quantity of food produced for the benefit of the general community.

Bearing in mind the system by which the improvements and equipments of a farm are very generally the work of the tenant, and the fact that a yearly tenant is at any time liable to have his rent raised in consequence of the increased value that has

been given to his holding by the expenditure of his own capital and labour, the desire for legislative interference to protect him from an arbitrary increase of rent does not seem unnatural; and we are inclined to think that, by the majority of landowners, legislation, properly framed to accomplish this end, would not be objected to.

It is vain to attempt, as the noble marquis has attempted, to disguise the effect of this finding or to minimise its force. It affirms a fact, now beyond the possibility of contradiction, that the equipments and improvements of an Irish farm are generally the work of the yearly tenant, whose liability to pay an increased rent, by reason of his own expenditure of capital and labour, entitles him to legislative protection against the arbitrary raising of it.

I claim the judgment of this Commission as affirming the principle of the Bill, and giving to all its parts an authoritative sanction. Establish the propriety of 'legislative interference' with private contract; and the regulation of rents by legal decision, and free sale of the tenant's interest, so ascertained, will naturally follow. Increased security of tenure will become an inevitable result, and the great objects of the measure will be achieved.

As to fair rents, I shall say no more. I might cite statement after statement from the testimony given before both the Commissions, by skilled and faithworthy witnesses, in favour of compulsory arbitration or the action of a land court. And I might point, as of special significance in support of them, to the condemnation, by Mr. Bonamy Price, of the 'great abuses' which he admits to have arisen from 'the violent and unreasonable raising of rents.' But it may be well that I should advert briefly to some of the proofs which show that those statements and that condemnation were thoroughly justifiable, and have not been extravagantly expressed.

My lords, you have heard confident denial that rents in Ireland have been capriciously increased. You have been told that the Blue Books have been vainly ransacked to find evidence of such an increase; and yet I venture to say, that the proof of it is abundant and overwhelming. Some one hundred and fifty landlords and agents, and some five hundred farmers, were examined by the Bessborough Commission, and the evidence of the former class of witnesses, without any reference to the latter, seems to me conclusive on this point. I shall read a portion of it, and leave you to judge.

Mr. Watson, the agent of large estates in Antrim and Down, speaks thus:—

On small estates which were bought in the Landed Estates Court of late years by shopkeepers and small capitalists, as an investment for money, those are the people the tenants complain of—they screw the rents up fearfully. . . . I think it would be well if something could be done by which these small landowners, who raise rents unduly, should be checked. It seems a terrible thing that those small land proprietors should be able to raise the rents in the way they have done. . . . My object is to protect the tenants on small, recently purchased estates from being rack-rented, because I know they are in some cases. I know a case where the rent has been increased to 2*l*. 5*s*. an acre, where the old rent was 1*l*. and 1*l*. 2*s*.

Mr. Murray Ker, a landed proprietor, and agent to extensive estates in Monaghan, gives this testimony:—

I know some estates where the landlord has raised rents, and it has had the effect of checking improvements, and of ruining the tenants, and . . . . injuring the landlords, too, in the long run. On one of the estates I refer to, the landlord was too fond of raising the rent when he saw a tenant improving. I refused to be his agent for that reason. . . . There was one very bad case some years ago—the man who did it is dead and gone now. He wished to raise some money, and he served notices upon his tenants, and made them pay rents for their own improvements.

. . . A man who purchased land from the Church Commissioners in Leitrim . . . . nearly doubled the rent on his own tenants. Those small land proprietors are generally the men who charge high rents.

Mr. Barry, a landowner, who farms largely, said:—

Rents are very much higher in my districts, I think, than they ought to be.

Q. Have you any instances of rent being unduly raised during the past eight or ten years?—In several instances where the lease ran out the rent has been raised. I know an instance where a property was purchased in the Landed Estates Court; the rent on one man was 100*l.* a year; and I consider, having a personal knowledge of the farm, that that 100*l.* a year was full value for it. I myself, as a practical farmer, would not take the farm at 80*l.* a year; but the rent was raised on that tenant up to 125*l.* a year by the purchaser. The result has been that the man is smashed. The other tenants on the property had their rents raised in the same proportion. The rents have been paid by the farmers denying themselves many of the necessaries of life. . . . They are thrifty and industrious.

Mr. Rochfort, an agent on several estates, says this, in reference to the legislation of 1870:—

The Land Act failed, in my opinion, in protecting small holders from liability to pay exacting rents. I do not think it affords adequate protection in cases in which the landlord wishes to raise the rent, more especially on the tenants' improvements.

And Mr. Murphy, who holds great agencies in Donegal and Down, and is an Inspector of Land Improvements under the Board of Works, uses these words:—

I think if the Act had been loyally received by landlord and tenant at first it would be working now very harmoniously. But it was not. On the other side, some landlords thought that their rights were invaded, and they set to work to counteract it. . . . I think the machinery of the Act might be improved in one particular—and that is the rent question.

My lords, I might multiply quotations to the same effect, equally strong and equally reliable; but I must not weary the House, and I pass to the denial you have heard, of the assertion that the more recent purchasers in Ireland have not been specially harsh and exacting. A sufficient answer may be found in the passages I have already put before you, and I shall add on only one or two, beginning with Mr. Kavanagh's summary of the testimony on the subject in his separate report:—

Evidence has been given that on several properties—some purchased as speculations, others belonging to owners who have had no real tie to either the land or the people, save that of deriving their income from it—rents have been raised to what has been described in some instances as an exorbitant extent.

I shall trouble your lordships with only two or three short extracts from the evidence which is so described.

Mr. Barbour, lately a land agent in Mayo, gave this as the result of his experience:—

There are some of these people who buy property—they are a curse to the poor people instead of a blessing;—they buy property at a high figure, and they say, 'Mr. Barbour, I am sorry I must raise your rent, I paid a large sum for that.'

Mr. Reeves, a man of high position, and an influential agent, gives this opinion:—

I don't think there would be many cases of difference between the old hereditary landlords of the country and their tenants, but the strangers, the purchasers in the Court, who 'don't know Joseph,' they want to get as much as they can out of their investments.

Mr. Hamilton, Q.C., the eminent Recorder of Cork, speaks to the same effect:—

Tenants, as a rule, do not complain of rents on the large estates. I do not believe the Land Act would have been passed

at all but for the conduct of the speculators under the Landed Estates Court and middlemen.

These things are of common notoriety in Ireland, and would not need such testimony in an Irish assembly, conversant with Irish affairs, to obtain for them full credence.

I had marked extracts from the evidence which negatives the allegation, that the raising of rents has not deteriorated the tenant-right of Ulster; but I cannot venture to weary you with them. And I shall conclude this portion of my argument by submitting that the citations I have made from the Bessborough Report find strong confirmation in the testimony given before the Richmond Commission, which, if it stood alone, would persuasively sustain the principle, the policy, and the necessity of the Bill. I shall cite only two short specimens of it—one from the statement of Mr. King Harman, a landlord entitled to absolute trust, and the other from that of Mr. Murrough O'Brien, a gentleman of great official experience and unimpeachable veracity. I give three of the questions put to Mr. King Harman, and his replies :—

In point of fact, the purchasers under the Encumbered Estates Court have very generally ignored the improvements made by the tenants ?—They have very often gone upon a very simple principle indeed, and that is, that they would get a certain percentage for the money that they laid out. I know the case of an English gentleman, who purchased property in Galway and Roscommon, and all his instructions to his agent were to increase the rent 15 per cent. He never went on the land, and never saw the people ; but his instructions were to increase the rent, that being a fair remuneration, in his opinion, for money laid out on the purchase.

But have not land-jobbers raised it beyond that ?—Far beyond that. I merely instance this as a speculation, in what you call a respectable class of life. Perhaps the word 'respectable' is not the word ; but if you go from the higher class to the lower class in a small town, those who keep public-houses, or village

usurers, or who combine the two trades, those men invariably raise their rents to a frightful pitch. In point of fact, they will screw the last farthing; there is nothing that the poor people fear so much as the land getting into the hands of those people.

The action of these land-jobbers has been to appropriate to the landlord the improvements made by the tenants?—Certainly.

I shall read the answer of Mr. O'Brien to a single question. It is not unworthy of the attention of your lordships:—

You stated that the interest of the landlord and tenant in Ireland was not the same as in England. Now, in what respect does it differ?—I think there is a very great difference between the position of the two interests in Ireland and in England. As far as I know, from travelling in different parts of Ireland, and from being acquainted with a great many estates and landowners and their tenants in Ireland, the general practice is for the tenants to make the improvements, especially on the small farms. It certainly would not be remunerative to the landlord to make buildings on small farms, and the consequence is that the larger the expenditure of the tenant on his farm the less is it his interest to object to any increase of rent. It is not possible to separate the value that the landlord might ask, on account of increased prosperity, from the value that is added by the tenant to his farm by his improvements, by careful cultivation, by drainage, and by reclamation of waste lands; and that is the core of the land question in Ireland. Of course, I think I have had but limited opportunities of observing, but I am borne out by all that I read of other observers; and if I might read an extract from the report of the Devon Commission, it describes exactly the state of things that now exists. After speaking of the state of things in England, it says: 'In Ireland the case is wholly different. It is admitted on all hands that, according to the general practice in Ireland, the landlord builds neither dwelling-house nor farm offices, nor puts fences, gates, &c., into good order before he lets his land to a tenant. In most cases, whatever is done in the way of building or fencing is done by the tenant; and in the ordinary language of the country, dwelling-houses, farm-buildings, and even the making of fences, are described by the general word

"improvements," which is thus employed to denote the necessary adjuncts to a farm without which, in England or Scotland, no tenant would be found to rent it.' That expresses what I should say is the general case in Ireland.

My lords, I venture to think that I have sustained my case by weighty authority, founding itself on satisfactory evidence. What Mr. O'Brien calls 'the core of the land question in Ireland'—the question of rent, which Mr. Kavanagh pronounces to be 'at the bottom of every other'—cannot, according to that authority and that evidence, be fitly dealt with otherwise than by the establishment of a tribunal, framed to command the public trust, and discharging its great duties—without fear or favour—to the landlord and the tenant alike—with equal care for both and single regard to the requirements of justice. And it is pleasant to know that these tribunals will not enter on untrodden paths or lack the guidance of a large experience.

For ten years the judges of the County Courts have been successfully employed in settling the relations between the proprietors and the occupiers of Irish land. In compensation cases, questions as to the proper amount of rent have been of frequent occurrence, and the judges have found no difficulty in arranging it, to the reasonable satisfaction of the litigating parties. They have had no glut of business, such as was prophesied in 1870; and I do not apprehend that their Courts or that of the Land Commission need be hereafter overworked, when the machinery of the new system gets fully into gear. Therefore, there is every ground for hope that the fixing of fair rents on equitable principles will be feasible and easy; and, if it be rightly accomplished, where will be the injustice?—what will be the injury?

Next, as to free sale:—Is there real ground for the vehement objections that are urged against it? The tenant

has an interest in the soil—an interest long recognised by usage and opinion in Ireland, now clearly affirmed, as I conceive, by Statute Law, and to be put out of the pale of controversy if this Bill be accepted by the Legislature. Why should he not sell that interest, as any other possession of his own, care being taken that the sale of it does not diminish or imperil the property of his landlord? The Common Law gives him such a right, and, in the full restoration of it, Parliament will only move back upon the ancient ways. The right is according to reason, and the exercise of it will be for the manifest advantage of all concerned. Judge Longfield, whose opinions have been received with respect and deference in this House, thus emphatically adopts the principle of the Bill in this respect:—

> When a tenant, by any means, acquires a valuable and permanent interest in his holding, it is only reasonable and just that he should have the power of selling it. This 'F'—Free Sale—is useful and almost necessary to him, and it does no harm to anybody.

No, my lords, it does good to all. The evidence on that point is decisive, in support of the recommendations of the Bessborough Report. For half a century, on the Portsmouth Estate in Wexford, the most unrestricted privilege to sell has been conceded to the tenants, and they have sold accordingly, with perfect freedom, and the smallest and rarest intervention on the landlord's part. And what has been the admitted result? That the property may compare with the most prosperous and productive in any part of the three kingdoms. There have been no evictions. There are no arrears. The owner and the occupier live on terms of complete cordiality and mutual trust, and their relations in every conceivable way are as happy as possible. So, throughout Ulster, the right of free sale is a recognised

benefit and blessing to all who have an interest in the soil. The landlord finds in it the safest guarantee for his rent, and the tenant the best encouragement to his industry and the surest warrant of his happiness. People have speculated gloomily, as to evils to arise from the exhaustion of the capital which the tenant invests in his purchase, and so withdraws from the culture of his farm. But the shrewd people of Ulster know best their own true interests, and they cling to their tenant-right, with all its incidents, as a precious possession. They will allow no man to meddle with it; and any assaults upon it, as was said by a competent witness, before a committee of this House, would produce excitement and resistance which all the force of the Horse Guards might not avail to subdue. And if the right be extended to the other provinces, there is no cause for apprehension lest it should be too frequently or improvidently used. The Irishman does not part from his little holding so long as he can keep it. His attachment to it is very strong. When necessity compels him, he tears himself away with sorrowful reluctance. But whenever he has enjoyed this salutary right, it has helped to save him from destitution and ruin, whilst the use of it habitually gives his landlord a better tenant in his stead.

My lords, if you are led to acknowledge the force of the reasoning and of the facts which commend fair rents and free sale to your acceptance, I need not exhaust your patience by arguing in favour of security of tenure. The want of it has been the ruin of agricultural Ireland. The possession of it will be her salvation. Industry cannot be prosecuted with life or spirit when its realised fruits may be snatched from their producers. That which we hold at the arbitrary will of another we cannot call our own. This Bill will give a continuance of possession to the Irish tenant, large enough and long enough to induce him to

energetic effort; and he has proved himself capable of such effort, under favourable conditions, in his own and in other lands. The opportunity for recurrence to free contract, after a time sufficient for the growth of relations consistent with it, is not taken from him; but he gets a fair start, and an abundant opportunity of planting himself firmly on the soil of his country.

My lords, on the remaining portions of the Bill, I am happy to think that I may spare you any observations. The noble marquis has indicated his approval of the Emigration Clauses, and they will scarcely be brought into serious controversy here. For the part of the scheme which aims to multiply proprietors, I shall only say that, throughout my life, I have looked to the application of its principle as of capital importance to the permanent well-being of Ireland. It is designed to create a body of independent and self-relying men, cultivating the land with all the hopefulness and all the devotion with which the magic of property has inspired the people of other nations, wherever they have been permitted to toil, in the happy assurance that the fields they make productive are for ever their own. If it succeeds, it will bridge over the perilous chasm which now separates the very rich from the very poor. It will graduate a descent which is now too precipitous, and connect harmoniously classes too widely apart. It will give them a common desire to promote the peace and order which are essential to their common well-being. It will secure for the law the friendship and support of all who, having acquired substantial interests, which law alone can guard, will comprehend the value of its protection and the necessity of its maintenance. The operation may be slow, but it will be sure; and if those to whom it offers such priceless advantages are only true to themselves, and use the opportunity with which it tempts them, it will trans-

form the face of Ireland and open to her a great career. England has long had in her yeomanry—secure in happy hearths and homes inviolate—the solid bulwark of her constitution, and the strength and mainstay of her social fabric; and, with God's blessing, in the near future, under the influences of this great measure, Irishmen may attain a kindred blessing. The official and fiscal difficulties which made the Bright Clauses of the Act of 1870 barren of their anticipated fruits may easily be avoided, and the facilities which will be given under the action of the Land Court, for sale and purchase, will be ample to carry into full effect their beneficent purpose, if they are not wantonly neglected or perversely contemned.

My lords, I venture again to say that, the more it is considered, the more will this Bill appear to be large in its conception, complete in its details, and far-reaching and enduring in its elements of usefulness. You will not reject it. Do not emasculate it. What you give, give freely. It is not a mere Land Reform. It is a noble effort for the redemption of a people. It is, as I said years ago of its predecessor, an effort to reverse the evil policy of the past. It is a generous attempt at reparation for many wrongs and sufferings. With God's blessing, it will achieve its purpose. The Irishman is not doomed to endless misfortune by any law of destiny. Give him encouragement to exertion, reward for his labour, security in his possessions, and an inspiring hope, and he will play a man's part in the battle of life. He has attained, after many a struggle, religious equality and extended civil rights and diffused intelligence. Add the material advantages offered by this Bill, and you complete the equipment for his prosperous and loyal citizenship. Edmund Spenser, when he speculated on the causes of the evil condition of Ireland, suggested that Almighty God

might have reserved her in her unquiet state, 'for some secret scourge which through her might come to England.' Measures like this will falsify the gloomy prophecy. Under their action the 'secret scourge' will threaten you no more; and by a wise policy of liberality and justice you will make her a peaceful, a prosperous, and a happy nation.

On August 2 the Bill was read a second time without a division. In Committee, however, some of the most important of its provisions were rejected or materially altered, and thus amended it passed the third reading. Throughout three long sittings the Amendments of the Lords were considered by the Commons, and finally the Bill was sent back to the Upper House almost in its original form. The Lords reinstated most of their amendments, and when the Bill was again leaving the House Lord Salisbury observed, amid the cheers of his followers, that 'the conduct of the Government and the conduct of the House of Lords must be left to the judgment of the country.' The situation of affairs was for the moment extremely critical; but, after the lapse of a day, a compromise was agreed upon, and the Bill, 'improved,' as Lord Carlingford remarked, 'by the comparison of the opinions of the two Houses,' passed into law.

A SPEECH DELIVERED IN THE HOUSE OF LORDS, AUGUST 1, 1882, *ON THE THIRD READING OF THE ARREARS OF RENT* (*IRELAND*) *BILL.*

INTRODUCTORY NOTE.

At a special meeting of the House of Lords on Saturday, July 22, 1882, the Arrears Bill was introduced and read a first time on the motion of Lord Fitzgerald.

It was read a second time on July 27 after a good deal of discussion, but without a division.

On July 31 the Lords went into Committee on the Bill, and disposed of all the clauses in one sitting.

Of the amendments passed, two—moved by Lord Salisbury—were opposed by the Government as destructive of the vital principle of the measure.

The Bill was read a third time on August 1, and on the motion that it pass a discussion again ensued, in the course of which Lord O'Hagan spoke as follows.

SPEECH.

My Lords,—Circumstances prevented me from taking part in the debate on the second reading of this Bill; and I feel a great unwillingness to allow it to pass from the House without a brief expression of my earnest hope that, notwithstanding all obstacles, it may substantially and in its integrity pass into law. I wish to assure your lordships that many of the best and wisest men in Ireland look with absolute dismay at the prospect of the loss of it, and would regard that loss as a national calamity. The possibility of what may come to Ireland in the approaching months and years if this Bill should not be passed in some shape or other by this House they regard with anxious apprehension. It is not for me to speak of the great statesman who introduced the Bill, or to say why he declared—if he has declared it—that such an amendment as that of the noble marquis opposite[1] will render it impossible to proceed with the measure. But if he has made such a declaration, I can comprehend why he has done so. The amendment is inconsistent with the Bill, because it gives the landlord absolute dominion over the tenant in matters most essential to the tenant's interest. It is inconsistent with the Bill because the Bill designs that the tenant shall be perfectly independent of his landlord. The House of Commons has given a control over the Church Fund on the faith of the Bill as it stands. If we subject it to another power, there will be a breach of

[1] Marquis of Salisbury.

faith with the House of Commons. In my opinion, the efficacy of the Bill will be destroyed by the amendment of the noble marquis; and, should it be abandoned, great will be the responsibility of the House and of the Government. I state my conviction that, for Ireland, the passing of this Bill substantially in its integral condition is an absolute necessity. I do not say it is an immaculate Bill. I do not say that I am enamoured of all its provisions. There are matters contained in it for which I am not an advocate. I do not deny the force of the objections to some of its details. I admit that there may be difficulty in ascertaining the true condition of an applicant for relief. I appreciate the considerations which have induced very many of its warmest supporters to prefer the machinery of loan to the machinery of gift; and, for myself, I have always regretted the application of the Church Fund to such an object. Indeed, I regard that application with great disapproval, for I had hoped that that fund might have been kept sacred to purposes of permanent utility in Ireland—to purposes more or less akin to that to which it was originally dedicated. To such a purpose it was devoted when the grant of 1,000,000*l.* was made for Intermediate Education, and, again, when the Royal University was sparingly endowed; and I had desired to see similar beneficent allocations of the residue. I lament that the exigencies of the situation have induced the Government to make another disposition of it; even though that disposition was authorised by the terms of the Church Act. But, at least, such a use of an Irish fund for Irish purposes might have mitigated the violence of the declamation we have heard about the spoliation of the English taxpayer, and against the application of English money for the relief of Ireland. How does the case stand? The great bulk of the funds to be employed under this Bill will come from

Ireland. For the instructions to the Treasury are not to apply English money for the purpose until there is not a farthing of the Irish Church Fund left. Not a penny is to be sought elsewhere if that fund is found adequate to the temporary need. I concur with my noble friend the late Lord-Lieutenant of Ireland[1] that this being a United Kingdom—which ought to be united in feeling and in object—there is nothing unreasonable in asking the people of one district to be helpful to the people of another—that reciprocal kindness and reciprocal aid should be the fruit of a concession for their common interests—and that Great Britain will not be without compensation for any outlay required of its resources, if measures like this produce the restoration of peace and order in Ireland, and so reduce the burden of taxation and promote the general safety and well-being of the empire. My lords, I am of opinion that, in these and other things, the Bill is open to some reasonable exception. But its justification is its necessity. It has been said of old, 'Necessity has no law;' and its pressure has often led men to ignore the deductions of logic, and transcend the limits which economic science would prescribe. The Bill is necessary, and it is necessary not as a mere eleemosynary measure for the relief of the impoverished peasants and the struggling landlords who exist in large numbers in Ireland. The Bill is intended for them as much as for the starving tenants. It is a Bill for the benefit of all the people of Ireland. Its object is to supplement the Land Act of last Session, and to reach by its provisions as many people as possible. It is essential to the success of that Act; essential that it may work freely, and widely, and procure fair play for the great experiment of social change which it inaugurated. My words with reference to that Act will, I know, have no

[1] Earl Cowper.

gracious reception in this place. We are familiar with abuse of its principles and of its administrators; and we have been vehemently told that the relation of that measure to this is alone sufficient to justify an adverse vote. But, my lords, I pray you to remember that, whatever may have been your views as to the policy of the Land Act, it is the law of the land. You have been instrumental in making it the law, and you are bound to accept it, with all its legitimate consequences. It is the work of the Legislature, sealed with the sanction of the Crown. Your lordships constitute a great political assembly; but you also constitute the highest legal tribunal of the realm; and it is not in this House that any statute should be treated with indifference or contempt. You are bound to give the Bill its due effect. I believe that it has, undoubtedly, as we have been told, wrought a social revolution, and a social revolution of deep and far-reaching influence, which will only be consummate and complete when it has been brought into full operation, if Parliament shall agree to carry into effect the recommendation of a committee of your lordships' House. But what is done cannot be undone. You cannot rase the seal from off the bond. You cannot, by any amount of anger and vituperative violence, restore Ireland to the condition in which she was before the Land Act passed. It is the interest and the duty of every man to see that the revolution is utilised, instead of being rendered destructive; and it will be more wise to give frank acceptance to the new state of things, and honestly endeavour to make the best of it. And for that purpose you are asked in this measure to strike down the barriers which are holding away multitudes from the benefits of the recent legislation, and leaving them subject to the misery of eviction. Surely it will be better for all concerned if the hopes held out to the people by Parlia-

ment can be realised; if the promises of fixed tenure and fair rent on which they rely can be fulfilled; and if we can convert those whom suffering has made disaffected, and despair has made criminal, into law-abiding and order-loving men. This is the high function of the Bill, with all its shortcomings and all its faults; and if it can accomplish this, it will be a boon and a blessing, not to one class only—not to the tenant or the landlord alone—but to the entire community. It will do very much for the settlement of Ireland and for the permanent good of the British Empire.

My lords, it is not easy to obtain statistical evidence in such a matter, but I believe there are tens of thousands of humble people to whom this Bill will bring substantial relief, not merely in a temporary way and for present exigencies, but as enabling them to enter securely on the paths of industry, and enjoy the permanent possession of comfort and competence in holdings made lastingly their own. Three terrible seasons, which emptied the savings banks and thronged the workhouses, have reduced a great body of the Irish peasantry to a hopeless condition. Their decadence has been continuous, steady, and complete; and without the help of the State it will be beyond recovery. It is believed by those who are best informed that if that help be given, there will be a rush of suitors to the Land Courts such as, to the astonishment of everyone, took place when they first opened. These persons will get a new start in life under the new circumstances of the country, and the result will speedily be seen in the improvement of manners, the progress of industry, and the obedience of contented men to the law which has given them protection. As it is, grievous evil will result if this measure comes not to soften discontent. They will brood over their misfortunes, and become a prey to criminal temptations. They cannot

pay accumulated arrears, and they will be cast upon the world to pine and perish in the ditches, or on the hill-side, unless they eat the bitter bread of public charity. The evictions in Ireland have fearfully increased; and the returns for the last month alone—the month of June—show that 515 families, comprising nearly 3,000 persons, were turned out of their homes during its progress. From poverty comes eviction, and from eviction outrage, and thence the social confusion and the unpunished crime which have brought such disgrace and sorrow to Ireland. And, my lords, there is further mischief. Those who suffer thus, and are thus corrupted, act upon others more fortunate than themselves. The man who cannot approach the Land Court, to gain security in his holding and escape expulsion from it, does his utmost to prevent his neighbours from availing themselves of the fair advantages of their better state, and rejoices when he can make them as desperate as himself, and lure or terrorise them to the evil courses to which his own misery has led him. And so disorders spread and outrage flourishes, and the country is baulked of the advantages which the Legislature has bestowed. The aim and purpose of the Bill are to change all this, and bring those advantages within the reach of men who should enjoy them. It will improve the tenants' condition, whilst, on the other hand, landlords who may have been reduced to the verge of destitution will find themselves, through its assistance, helped through their day of trouble, and enabled to maintain their position, and hope for better times.

My lords, it is easy for the owners of great principalities to tell you that this Bill will not be useful to their class. Rich and prosperous, they do not want it for themselves; but there are multitudes of the proprietors of Ireland whose condition is lamentable, whose wants are urgent,

whose sufferings are sometimes as worthy of sympathy and pity as those of the evicted and hopeless and helpless peasant, and to them the payment of two years' rent upon the average would be an enormous blessing. My lords, this is the state of things which makes, as I have said, good and wise men look with dismay on the chance of the loss of this Bill and its possible consequences—a continuance of the social wretchedness which has too long prevailed in Ireland, and an increase of the disorder which has grown unendurable. My lords, in presence of such dangers, I trust your lordships will not deprive the country of the Bill; and I pray you to remember, when it is condemned as violating economic laws, that abnormal circumstances require abnormal treatment, and that the circumstances of Ireland are abnormal in the extreme. The late Government did not hesitate to help the peasant with seed and the landlord with loans, largely, at 1 per cent., because there existed an exceptional necessity. The present Government, with deep reluctance, have passed, with your lordships' help, a measure of repression which violates the constitutional principles they cherish most, and destroys the constitutional safeguards they hold most precious for the security of public liberty. If these things have been justified by the necessity of the case, this Bill is amply justified. The measure of coercion should not be dissociated from the measure of relief which has been promised to make it more tolerable. Whilst you accept what is harsh, do not reject what is beneficent. If you have felt yourselves driven to restrain and punish, do not be obdurate to the appeal of expediency and mercy. In the interest of the embarrassed landlords and the suffering people of Ireland, and still more in the interests of peace, law, order, and prosperity, I appeal to your lordships, and especially to such of your lordships as follow the lead

of the noble marquis opposite,[1] so to shape your course as not to take from Ireland the advantages which will be conferred by this Bill, and leave the country to the miseries to which its rejection will unquestionably expose her. I trust most earnestly that it may be allowed to pass.

The Commons, in considering the Lords amendments, dealt with them in a conciliatory spirit, meeting them not with rejection, but with further amendments, and the Lords, in their turn, accepted these amendments, and passed the Arrears Bill on August 11, 1882.

[1] The Marquis of Salisbury.

NOTES.

NOTE A.

The following reference to Mr. O'Hagan's appearance and speech at the meeting of the Repeal Association is taken from Sir Charles Gavan Duffy's 'Young Ireland,' p. 258.

Thomas O'Hagan was then one of the most successful, and beyond comparison the most popular, member of the junior Bar. It was said of him that he had no enemy. He was sometimes compared by his friends to Francis Horner, for the sweetness of his nature and the unstained probity of his career. His face had the frankness, and his bearing that unaffected grace which painters bestow upon Milton and Somers in their youth.

Among a profession which has never wanted conspicuous intellect, he was often named as legitimate heir to the eloquence of Curran. From the outset of his career a signal success at the bar was predicted for him, and he has justified these predictions by attaining to the office and the rank of Plunket, without exciting jealousy by unwarrantable progress, or reproach by any recantation of his political convictions. Mr. O'Hagan attended the Association, described his motives in joining it, and indicated the exact position he occupied, a position which was singular in that assembly. It was a speech which reflected his character, where civic courage united with moderation of aims and a proud sense of personal integrity. He desired a federal union with England; a local Parliament to deal with local interests, and an imperial Parliament, in which Ireland should be adequately represented, to deal with imperial interests.

On the dismissal of the magistrates he spoke with a moderation and practical knowledge which proved very persuasive.

It was questioned by competent critics whether the Association, in whose main aim he did not agree, and whose methods he censured, ought to have received this recruit; but the gain was so manifest that O'Connell overleaped impediments, and declared that Federalists were entitled to become members, and joyfully welcomed Mr. O'Hagan on his own terms.

Note B.

These are the terms of the article in the 'Belfast Vindicator' which gave rise to the prosecution:—

Hughes's Case—A Law for the Protestant and a Law for the Catholic.

Francis Hughes has been tried for the murder of Mr. Powell, for the *third* time, and a verdict of conviction at length obtained against him. On his guilt or innocence it is not our province to pronounce; but we do affirm, without fearing that any conscientious man in the empire will differ from us, that he has not had a fair and impartial trial, such as the law of England intends that every prisoner shall receive.

He has not been tried indifferently, as a person under the protection of the law, for whom the judge is counsel, and the executive an unprejudiced arbitrator; but he has been tried as an Irish Catholic, whose guilt ordinarily appears to be assumed, and whose conviction seems to be desired.

If we speak strongly and decidedly on this matter, the circumstances demand it; for if we do not *now* and *here* make a stand for justice, no Catholic in the community is safe. On one hand we are exposed to the impunity of the Orange assassins; on the other to the conventional injustice of the law itself. If we submit to either in silence, we deserve to suffer both for ever.

That this case of Hughes's, and the monstrous injustice which it involves, may be fully understood where the system under which we live in Ulster is not known, we must contrast it with that of the prisoners for the murder of M'Ardle. Both are fresh in the public mind, and it is impossible that any two cases could better illustrate a system than does the one against which we now testify.

In the case of M'Ardle, four Orangemen were tried for the murder of a Catholic. The jury in the box at the time the case commenced (who had been employed in other cases) consisted of eleven Protestants and one Catholic. The agent for the next of kin of the murdered man objected to several of the jurors as partisans, but the Crown counsel insisted on retaining them all without exception.

In Armagh, a Catholic was to be tried for the murder of a Protestant. When the case commenced a jury was also in the box which had tried two or three cases already; it consisted of ten Protestants and two Catholics, and it was proposed to the Crown to follow the practice which had been pursued in Down, and retain the jury already sworn. The Crown counsel decidedly refused to adopt the system in

the case of the Catholic which they had adopted in the case of the Protestant.

Two of the jury then stated that they had acted on Hughes's former trial, whereupon it was proposed to the Crown to let the other ten remain, and to complete the jury with the next two persons called on the panel. This also was plumply refused!

So far for the contrast between the two cases. But further still. We have reason to know that, on the day before the trial, the agent for the prisoner proposed that the jury should consist of four Protestants, four Presbyterians, and four Catholics, selected by the Crown solicitor from the entire panel. The proposal was at once negatived!

The challenging began. The prisoner's counsel contended that the expression of an opinion hostile to the prisoner was sufficient ground of objection. The counsel for the Crown insisted that it was not, and the Court ruled with them. Persons who had pronounced themselves actual partisans against Hughes were thought very proper jurors to try him, provided only they were Protestants.

And further—the Crown challenged every Catholic who was called. They were, we believe, ten in number; six were publicans, but five, at least, were not—namely, Mr. Vallely, an opulent and extensive haberdasher; Mr. Conolly, a respectable trader; Mr. M'Donnell, a builder, and the contractor for the new Catholic cathedral; and Mr. Gibbon, a master stone-cutter; yet every one of these was peremptorily challenged by the Crown—and a jury purely Protestant was empanelled to try the Catholic prisoner.

The trial proceeded: the counsel for the prisoner did all that great ability and great energy could do; but the result was a conviction. The jury, no doubt, gave a conscientious verdict; but they were a jury picked out against the prisoner.

And let this additional fact be kept in recollection. The crime charged on the Ballyroney Protestants, who had a Protestant jury, was one arising out of religious dissensions; whereas the case of Hughes, who was denied even one juror of his own faith, was purely agrarian in its character, and had nothing whatever to do with religion. But the practice is fixed, and does not depend upon circumstances; the established rule is to give a Protestant prisoner a Protestant jury, and to give a Catholic prisoner a Protestant jury. And what is the meaning of this scoundrel system? What can it mean but one of two things: either the insolent and atrocious libel that Catholics are unworthy to be trusted on their oaths, or the infernal principle that it is desirable not to do them justice? We cannot mince the matter; it comes precisely to this. We do not care which horn of the dilemma is chosen, but one of them is inevitable.

It is time for the Catholics of Ulster to ask themselves, Is this system to continue? Are they to be for ever the victims of a sanguinary and insulting usage, which does not stab them more effectually when

it inflicts an unjust verdict, than when it audaciously turns them out of the jury-box, as incompetent to perform its duties with honesty and propriety?

We may mention as a curious coincidence—for we cannot permit ourselves to think that it is a further illustration of the system—that while an approver was employed against Hughes in Armagh, the Crown counsel actually refused to receive the testimony of an approver in the Ballyroney case; Stewart, one of the prisoners for the murder, having, to the last minute, desired to become Queen's evidence. This fact, which has not before reached the public, we would not now mention, if it were not so pertinent to the present case, in which Hanratty was joyfully received and produced against Hughes.

Francis Hughes, tried and convicted under such circumstances, ought not to be executed. In addition to the inherent injustice of the case, the Crown broke through their practice (if we are to take the statement of Mr. Solicitor-General Jackson in the House of Commons for authority), to procure a jury of their own mind. Under such circumstances, it would be monstrous to proceed to capital punishment with their victim. But there is a matter of more moment than even the life of this unfortunate man involved in the case—there are the lives and safety of the whole Catholic community.

Without exaggeration or hyperbole, such is the stake; but if we make ourselves heard and felt where we have such ample grounds of complaint, the system must drop to pieces; and the visible sign of its discontinuance ought to be the mitigation of Hughes's punishment. We have seen the promptness and zeal with which the Presbyterian community exerted themselves in a matter of minor importance; if we are apathetic, no man amongst us, no matter how exalted or how virtuous, can promise himself that he will not, some day, become the victim of false witnesses and packed juries.

Note C.

A few passages from the Judge's charge are of historical interest, as showing the way in which the liberty of the press was regarded, even at so late a day, by the highest legal authority on the subject in Ireland, and also the tone and manner in which the Bench then, on occasion, supported the Crown against the subject. The doctrine that public officials in the discharge of their public duty are not a proper subject for newspaper criticism is thus laid down by the Chief Justice:—

'Now,' said his lordship, referring to the opening statement of the article, 'nothing can be clearer than the imputation thrown out there upon those concerned in the administration of justice, which is neither more nor less than that they sought to procure the conviction of Hughes by management and unfair means, and to procure the acquittal of the other by a similar contrivance. If there be a particle of truth in this accusation, the persons guilty of such conduct should have been at once brought before the proper tribunals, where they ought to be, and where, no doubt, they would be convicted of a very gross offence. But, gentlemen, with the truth or falsehood of those charges you or I have nothing to do here. This may seem somewhat strange in your eyes, but it is the law, and it is common sense. If a man be guilty of any crime or misconduct, by which he can be made answerable to the law, there are the proper tribunals to bring him before, where he will be tried and made answerable if he be guilty, and where he will be acquitted if he be not guilty; but no man has a right, because he is the proprietor of a printing-press and types, to set himself up as a tribunal to pronounce upon the guilt of his fellow-subject. If the Queen's Attorney-General or her Crown solicitors have misconducted themselves, there are, as I have already stated, the proper tribunals to bring them before, where they will be made answerable; but I would be glad to know by what authority the author of this libel has set himself up to pronounce a verdict against them. [The Chief Justice here read some passages from Blackstone, and also the case of the King *v.* Burdett, tried before Lord Wynford, with the view to show that the jury had nothing whatever to do with the truth or falsehood of the allegations contained in the libellous matter, and then continued]—It was open to Mr. Duffy or any other member of the community, to petition the House of Commons if he had any means of substantiating the gross charges which he has put forward in this publication. He might have got redress if he looked for it in a legitimate way. There is no man in the country against whom the doors of justice are closed; but who, I would ask, has made this man who printed and published this libel a tribunal before whom the Attorney-General and others concerned in the administration of the law are to be called? No such right exists on the part of any individual, let him be high or low, newspaper editor or any other person; and do you think, gentlemen, if the Attorney-General and his brethren thought proper to appear before Mr. Duffy, that they would get a fair and impartial trial? You may judge of the fact from the nature of the publication which forms the subject of the prosecution. Why leave the decision to him? What authority had he? I respect the liberty of the press as much as any man—when fairly and legitimately exercised; it is the happiest thing that can exist in a civilised state of society, but I would be glad to know how it can affect that liberty to make a printer liable for making a false charge?'

The conclusion of the charge is reported as follows:—

His lordship read one of the passages referring to the practice of refusing Catholic prisoners Catholic juries, and said, 'Now, gentlemen, was there ever a more diabolical libel than that? In my opinion, never; and yet this is said to be an innocent publication. I am not to decide the question, but I am to give you my opinion, and that is, that this is a gross and infamous libel; and that is not mincing the matter. There has been no stone left unturned, no point left untouched by the prisoner's able counsel, that could bear a favourable construction; but in my opinion the case is very plain. It will be your province, however, to say whether this is a libel or not; and if you differ with me, you have a perfect right to do so, and overrule my opinion, if, upon consulting your own consciences, you think you are paying a just regard to the oaths you have taken in doing so. It will be for your consciences to decide; if you have a rational doubt upon the subject, give the traverser the benefit of it, but if not you will be bound to find him guilty.'

Note D.

I am indebted to a friend of Lord O'Hagan's for the following interesting account of the affray at Dolly's Brae on July 12, 1849.

About midway between Ballyward and Castlewellan, in the county of Down, one of the spurs of the Mourne mountains is intersected by a rugged and narrow defile called Dolly's Brae. A mile or so nearer to Ballyward stands Magheramayo, one of those rough, rolling, half-reclaimed hills common in that county. Between these two points there occurred on July 12, 1849, an affray between the Orangemen and the Catholics of the district, which, although the amount of blood shed was not greater than had flowed in other similar past encounters, yet from the scandalous character of some of the previous and subsequent circumstances, as affecting the administration of justice, produced a sensation of public indignation throughout and beyond Ireland such as had hardly been felt since the Battle of the Diamond was fought upwards of fifty years before. In that interval of time, about thirty years previous to the affair of 1849, Dolly's Brae had been the scene of a party conflict in which the Catholics claimed the victory; and accordingly it had been for some time an established point of honour with them not to permit the Orangemen to march through the pass on the occasion of their annual celebrations. There was a lower road between Ballyward and Castlewellan, following the sweep of the mountain valley, by which for many years the Orangemen had been content to pass. But the degree of encouragement which the Irish Executive,

in its alarm at the revolutionary excitement of the year 1848, had given to the Orange Lodges to arm in its defence, greatly revived their pride and animosity; and the Orangemen of this particular district determined that on the next occasion of celebrating the anniversary of the battle of Aughrim they would march through Dolly's Brae. A magistrate of the county being in Dublin gave early information to the Government, who despatched a troop half composed of Inniskilling, half of the 13th Light Dragoons, half a company of the 9th Foot, and an extra force of 45 constabulary, to Castlewellan, under the direction of two experienced stipendiary magistrates, Messrs. Fitzmaurice and Tabuteau. They found on their arrival that they had to deal with a singular and a desperate fact—the fact that the magistrates of the district were Orangemen. The programme of the day was that the Orangemen should muster at the demesne of Mr. Francis Beers, a Justice of the Peace of the county, and at the Church of Ballyward, and that they should march thence through Dolly's Brae and through Castlewellan to Tollymore Park, the residence of the Earl of Roden.

Early in the morning Mr. Tabuteau occupied the defile of Dolly's Brae in force. The Catholic peasantry, who were then assembling in large numbers roughly armed with guns, pikes, and scythes, failing to secure the pass, fell back on the low ground along the road between Dolly's Brae and Magheramayo. Their priests, Fathers Mooney and Morgan, urgently entreated them to disperse, which they refused to do; then to promise that they would not be the first to attack; and to this they agreed. The procession advanced. A little way before it rode Mr. Fitzmaurice, the stipendiary magistrate, Mr. Hill, the officer of Constabulary, and Mr. William Beers, followed by a strong detachment of police. Then the Orangemen strode up the rugged road two by two, a body of about five hundred fierce and stubborn-looking men, some of them small gentry, but mainly yeomen farmers, farm labourers, shopkeepers; the officers of the lodges mounted, but the main body marching on foot, not without some touch of discipline in their movement; in general comfortably clad in blue cloth or frieze and corduroy, fantastically festooned with orange scarves and decked with orange lilies; all well armed with gun and bayonet.

The men marched silently along towards the pass according to order, or perhaps with the sense that the situation was so tense, a single rash word might be answered by a shower of bullets. They entered Dolly's Brae between ranks of soldiers and police. The little squadron of Light Dragoons brought up the rear. They passed through Castlewellan, and then slowly traversing a country of matchless beauty, where the mountains, the woods, and the waters are alike sublime, and harmonise in a panorama which includes all the finest and most characteristic elements of Irish scenery, the Orangemen at last, after a march of nine miles, reached the welcome shade of the noble larch woods of Tollymore.

Meantime there was bad news from Dolly's Brae. The attitude of the Catholics had grown menacing as the day advanced. Shots had been fired, as if to test their arms. In the afternoon many of them took up a strong position roughly entrenched on Magheramayo. The stipendiary magistrates entreated Lord Roden and the brothers Beers to advise the Orangemen to return by the lower road. But the advice was not given. Those who were asked to give it said they believed it would not be taken. The Orangemen marched back by the upper road, through Dolly's Brae, down the slope, and had safely reached the road under Magheramayo. It seemed that the Catholics were keeping their promise, and would not fire the first shot. The police were drawn up on the side of the road. The procession, passing through their ranks, was fast advancing out of range of the people on the hill, when a squib or pistol-shot was fired, by whom or out of which party is unknown. Then two gun-shots were fired, by whom or whence is also uncertain. Such was the subsequent conflict of evidence as to the origin of the affray, for faction of this sort so demoralises men that often in Ulster it has happened that those who could no longer fight with bullets fought with oaths. But about the third fire there was no mistake. It came in a loose volley from the Catholics posted on Magheramayo into the rear of the procession, and wounded two Orangemen. The police at once rushed up the hill, firing as they advanced and with good aim, for when they reached the ditch, by whose scarp the Catholics were partly screened, they found that out of eighteen shots five had told. They met with very slight resistance, for it was not to fight policemen that the people had gone there. A party of the Orangemen meantime made a dash up the other side of the hill; but the police, at some risk of being caught between two fires, interfered so as effectually to prevent collision. The men of the two factions, therefore, did not cross arms that day. But in the little village at the base of the hill, with police and soldiers looking on, the main body of the Orangemen were engaged in a work, which any one who has studied the history of their organisation will come to the conclusion is very distinctively characteristic of them. They were wrecking the village. The window-frames and furniture of the Catholic chapel, the national school, the priest's house, were broken and fired. The torch was set to thatch roofs, and a good part of the little place was soon in a blaze. As women and children tried to escape, they were fired upon. One little boy, while running across his father's garden, was shot dead by an Orangeman. Mr. Fitzmaurice with his own hand turned aside the barrel of a gun which another Orangeman was deliberately aiming at a young girl. Two women were killed, many wounded. One group closed round an idiot boy and broke his skull into fragments with the butts of their muskets. The police, the military, the magistrates looked on. There was no Riot Act read, there were no arms used; there was not even one single Orangeman arrested. After some little time the cavalry closed gradually

in, hemming the crowd who had formed the procession, and pressing them on towards Ballyward. The police, who had attacked the hill, brought up the rear with their Catholic prisoners. Then the bodies of the wounded and the dead were brought home, and the little village was left in wailing and ashes.

Note E.

It may interest the reader to see the following catalogue, chiefly compiled from the Bibliotheca Sacra of Le Long, of versions of the whole or parts of the Bible, written or published authoritatively in the vulgar tongue of various European countries *before* the appearance in 1534 of Luther's complete German edition, which is popularly supposed to have been the first vernacular translation. I preface the list with a quotation from a letter of Pius VI. to Ant. Martini, Archbishop of Florence, who translated the Holy Scriptures into Italian in 1779 :—

You judge exceedingly well (writes the Pope) that the faithful should be excited to the reading of Holy Scriptures, for these are the most abundant sources which ought to be left open to every one to draw from them purity of morals and doctrine; this you have seasonably effected by publishing the sacred Scriptures in the language of your country.

Italian Versions.

Circa 1290.—By Jacobus a Voragine, a Dominican, afterwards Archbishop of Genoa. (Vide Biblioth. Sacra Sixti Sevensis.)

Venice and Rome, 1471.—By Nicholas Malermi, a Camaldolese monk. It passed, before the year 1525, through thirteen editions, all of which were issued with the leave of the Inquisition.

Spanish Versions.

The historian Mariana mentions that during the reign of Alfonso the Wise (1221-1284) the Bible was by his direction translated into Castilian.

Circa 1405.—The whole Bible was given in the Valencian dialect by Boniface Ferrer; his brother St. Vincent is supposed to have been the author. It was printed with the formal sanction of the Inquisitors at Valencia in 1478, and was reprinted about 1515.

1512.—By Ambrosio de Montesina, the Epistles and Gospels.

Portuguese Version.

The historian Emanuel Sousa tells us that as early as the reign of King Diniz (1279-1325) the New Testament had been translated into Portuguese.

German Versions.

In the middle of the fourth century Ulfilas, a bishop of the Mæso-Goths who inhabited the district now called Wallachia, translated the Bible into the dialect of that province. It is said that he abstained from translating the Book of Kings lest he should inflame the martial ardour of his people, who had as yet imbibed but little of the mild spirit of Christianity. Another version into the Teutonic of his own age was made by order of Charlemagne. As the dialect continued to advance new versions were executed from time to time, and in the numerous MSS. of the Bible and portions of it with which the libraries of Germany abound may be traced almost a consecutive history of her language.

1466.—A German translation from the Latin Vulgate was printed, author unknown. In the Senatorial Library at Leipsic two copies of this version are preserved without printed dates, but the date 1467 is appended by the same hand that executed the illuminated capitals.

Before the publication of Luther's translation in 1534, this Bible was republished at least sixteen times—once at Strasburg, 1485; five times at Nuremburg, 1477, 1480, 1483, 1490, 1518; and ten times at Augsburg, 1477, 1480, 1483, 1487, 1490, 1494, 1507, 1510, 1518, 1524.

In the year 1534 a new translation from the Vulgate, by John Dietemberg, was published at Mentz under the auspices of Albert, Archbishop and Elector of that city.

French Versions.

There is a version of the Books of Kings and Maccabees referred by Le Long to the eleventh century. Several MSS. of the Psalms are preserved which Wharton places as early as the twelfth century, and a catalogue of the library collected by Charles the fifth written in the year 1373 contains a notice of a volume comprising the books of Proverbs, Psalms, Wisdom, Ecclesiastes, Ecclesiasticus, Isaias, and eighteen chapters of Jeremiah.

Circa 1478.—'Bible Historyale,' by Guiars des Moulins, containing most of the sacred books—but with text sometimes abridged and interspersed with the translator's commentary. This version, corrected and enlarged, passed through sixteen impressions before 1546.

An edition of the entire Bible, translated by J. Le Fevre of Estaples, was printed at Antwerp by Martin l'Empereur in 1530, and again in 1534 and 1541. It was revised by the divines of Louvaine, whose edition appeared in 1550, and has since been repeatedly printed.

English Versions.

The Venerable Bede, who died in 735, translated the entire Bible into Saxon. There are other Saxon versions, of a later date, either of the whole or of detached portions.

The first English translation of the Bible known to be extant, author unknown, is placed by Archbishop Usher to the year 1290; of this there are three MSS. copies preserved. Usher mentions that, towards the close of the following century, John de Trevisa, vicar of Berkeley, translated the Old and New Testament into English.

Flemish Versions.

We are told by Usher that the Bible had been translated into Flemish before 1210 by 'one named Jacobus Merland.' The Bodleian has a MS. copy of the Bible in Flemish of the date 1472. When the use of printing was introduced, considerable activity was displayed in the publication of the Scriptures in this language. An edition was printed at Cologne in 1475, two editions, entirely distinct, were published at Delft in 1477, another at Gonde in 1479, others at Antwerp in 1515, 1525, 1526, 1528.

Polish Versions.

A translation was made by order of St. Hedwige,[1] Queen of Poland, who died in 1399. During the same reign there seems to have been a second version by And. Tassowitz.

Bohemian Versions.

John Huss, 1369–1415, in one of his controversial tracts (Replica ad Johan Stokes), makes a direct allusion to the New Testament in Bohemian. The entire Bible in that language, translated from the Latin Vulgate, was published at Prague in 1488, afterwards at Cutna in 1498, and in Venice in 1506 and 1511.

Icelandic Version.

The astronomer Jonas Arnagrimus, one of the most distinguished among the disciples of Tycho Brahe, speaks of an Icelandic version of the Holy Scriptures in existence at the early date 1279.

Swedish Version.

Mathew of Sweden, who died Bishop of Worms in 1410, and who was confessor to St. Bridget, translated the Bible into Swedish with short annotations. See Benzelius, p. 66.

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[1] Polish writers entitle her Saint though her name is not inserted in the Martyrologies.

Note F.

The subjoined note on the Tralee election was written by Lord O'Hagan:—

'A vacancy occurring in the office of Income Tax Commissioner, Mr. O'Connell, who had been for a considerable period the member for Tralee, desired to fill it. The Government very willingly appointed him, hoping that I—their Attorney-General for Ireland—might be returned in his stead. Accordingly I resolved to stand for the borough.

'The circumstances were peculiar. I had been Solicitor-General without a place in Parliament from February 1860 until January 1861, when I became Attorney-General on the advancement of Mr. Deasy to the Exchequer. There had been, as far as I remember, no actual vacancy in an Irish constituency from 1860 until Mr. O'Connell left Tralee. Before I reached high office I had very numerous applications urging me to become a candidate, and I could easily have obtained a seat. In 1847 I might have been returned for Dundalk without a contest. Afterwards I was proposed to stand for the county of Louth, and the priests and people offered to lodge a sum sufficient to indemnify me for the expenses of a contest if I should undertake it. In 1852 Frederick Lucas entreated me to accept a constituency, without adopting the peculiar views of the party of which he and my friend Sir Charles Duffy were the most influential leaders. From time to time I had similar approaches made to me by the Liberal party in Dublin, Belfast, Cork, Sligo, Kinsale, and other places.[1] But I had little ambition to enter Parliament, and but a moderate appreciation of the value of success in it. I had great popularity and personal influence. I had an income as Assistant Barrister from an office which I liked—and in which I felt myself capable of efficient and useful action—largely supplementing a considerable revenue from a leading practice at the Bar with which the duties of that office did not interfere; and these I should have sacrificed—the first altogether, and the second to a large extent—if I had gone to Parliament. So that, in this regard, prudence was a check upon somewhat weak political aspirings. At one time it was contemplated to make me Judge of the Court of Admiralty,

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[1] Dr. Dixon, R.C. Archbishop of Armagh, writing to a friend of Mr. O'Hagan's in 1857, says: 'I wrote to a friend in Drogheda who was most likely to be acquainted with the feelings of the town. I shall send you some extracts from his reply to me. He says: "There is no man in Ireland who would be so acceptable to the constituency of Drogheda as Mr. O'Hagan. The day may come, and I hope will, when Mr. O'Hagan will honour the town by becoming its representative. It would, indeed, be an honour and an advantage."'

a post then tenable with a seat in Parliament, in order that I might be induced to give up my county and secure one. But the arrangement was not completed. And for the reasons I have mentioned I persistently resisted all political temptations until I attained successively the positions of Serjeant, Solicitor-General, and Attorney-General. Holding the last of these, without the usual preliminary of Parliamentary service, and having the consequent assurance of judicial promotion, I was still not very anxious for a seat; but the Government needed the help of an Irish law officer, and I had felt the inconvenience of being unable to defend them and myself from frequent attacks in the House of Commons, whilst I had found my presence in London at the Irish Office to such an extent desirable, that I had determined to relinquish private business at the Bar during my term of office. I had striven to hold my briefs by frequent crossings of the Channel and arrangements of cases; but my further duties were irreconcilable with my ordinary practice, and for years before I went on the bench I had abandoned the latter. I was, therefore, on every account disposed to be a candidate when the occasion offered at Tralee.'

Note G.

On November 9, 1881, Lord O'Hagan sat for the last time in the Court of Chancery. On that occasion the Right Honourable Hugh Law,[1] Attorney-General, M.P., speaking in the name of the Irish Bar, addressed him thus:—

My Lord,—We have reason to believe that this is the last occasion on which we shall see your lordship in this court, and, now that you are about to retire from the high office to which you have twice been called by her Most Gracious Majesty, I desire, on behalf of the Irish Bar, to offer to your lordship our willing tribute of respect and admiration for the impartiality, the ability, and the dignity with which you have discharged the important and difficult duties that devolved upon you. We record with unfeigned pleasure that during all the years of your judicial life, whether as the Judge of what was once known as the Court of Common Pleas, or as Lord High Chancellor of Ireland, your patience and courtesy have never failed, and that the very youngest and least experienced of our body might always safely reckon on your attention and encouragement. We would also venture to express a hope that, though now quitting scenes in which you have played so distinguished a part, your lordship will retain some kindly recollec-

[1] Mr. Law succeeded Lord O'Hagan as Lord Chancellor.

tions of the Irish Bar. We are glad to think that, as a member of the House of Lords and one who will again take an active part in the discharge of its functions, as the supreme appellate tribunal of the United Kingdom, you will still occasionally hear Irish causes and be addressed by Irish counsel, and that thus, notwithstanding your disappearance from amongst us, there will be no total severance of your connection with Irish law or Irish lawyers. But, my lord, I may not detain you any longer. It only remains for me once more to attest the esteem and regard in which you are held by the Irish Bar, and to offer to your lordship our warmest wishes for your welfare and happiness.

Lord O'Hagan replied as follows:—

Mr. Attorney-General,—I have heard with very mingled feelings of pleasure and regret the words you have spoken on behalf of the Bar of Ireland. There must be sadness in the severance, even though it be but partial, of relations which have subsisted so long between us, and have been cherished by me as of the highest value; but, on the other hand, I cannot fail to receive with pride and gratitude the signal demonstration of love and regard which you have made to-day for the second time. When I returned to office I felt some natural shrinking from the resumption of its grave and much-increased responsibilities, whilst I had a compensating pleasure in coming back amongst my old friends, and renewing my connection with my old profession. And, now that circumstances induce me to resign the great trust again committed to me, I have reason to rejoice in this spontaneous tribute of affectionate regard by which you assure me that those old friends are true as ever, and that that profession gives me its continuing confidence. During the entire period of my second Chancellorship I have received equally from the Bench and the Bar the utmost courtesy and consideration. I have had colleagues whose general kindness and constant helpfulness supplied my many shortcomings, and cheered and lightened the sometimes wearying toils of my judicial life. I was happy to find myself again at the head of a judiciary as learned, laborious, and efficient as is to be found in any country of the world, and to recognise in the Irish Bar—in its ability, its knowledge, its high principle—the same elements of forensic greatness which distinguished it in other days, and give assurance now that on all fit occasions it can prove itself worthy of their great traditions, and capable of emulating the best achievements of the past. Appreciating thus the qualities of those with whom in their various capacities I have been happily associated, I feel the parting from them very painful. You may well believe my heart responds to your appeal for kindly recollections of that profession with which my proudest and tenderest memories must for ever be associated, and to which I shall be bound in close attachment so long as I exist. To me also it is pleasant to think that Irish

causes and Irish counsel will be no strangers to me in the tribunal of ultimate appeal, in which I may hope hereafter to do some little service. Although I cease to discharge judicial functions on Irish soil, I have no purpose of abandoning a country which is very dear to me, or ceasing to strive, however humbly, for the promotion of its interests. I am glad to know that, in the sphere of honourable activity which remains open to me, I may hope sometimes to have opportunity of advancing them, and I shall not be less disposed to avail myself of it whenever it may arise, because I may be reminded of them by seeing familiar Irish faces, and listening to the eloquence of Irish tongues at the Bar of the House of Lords. I thank you from my heart for this repetition of your great and generous kindness.

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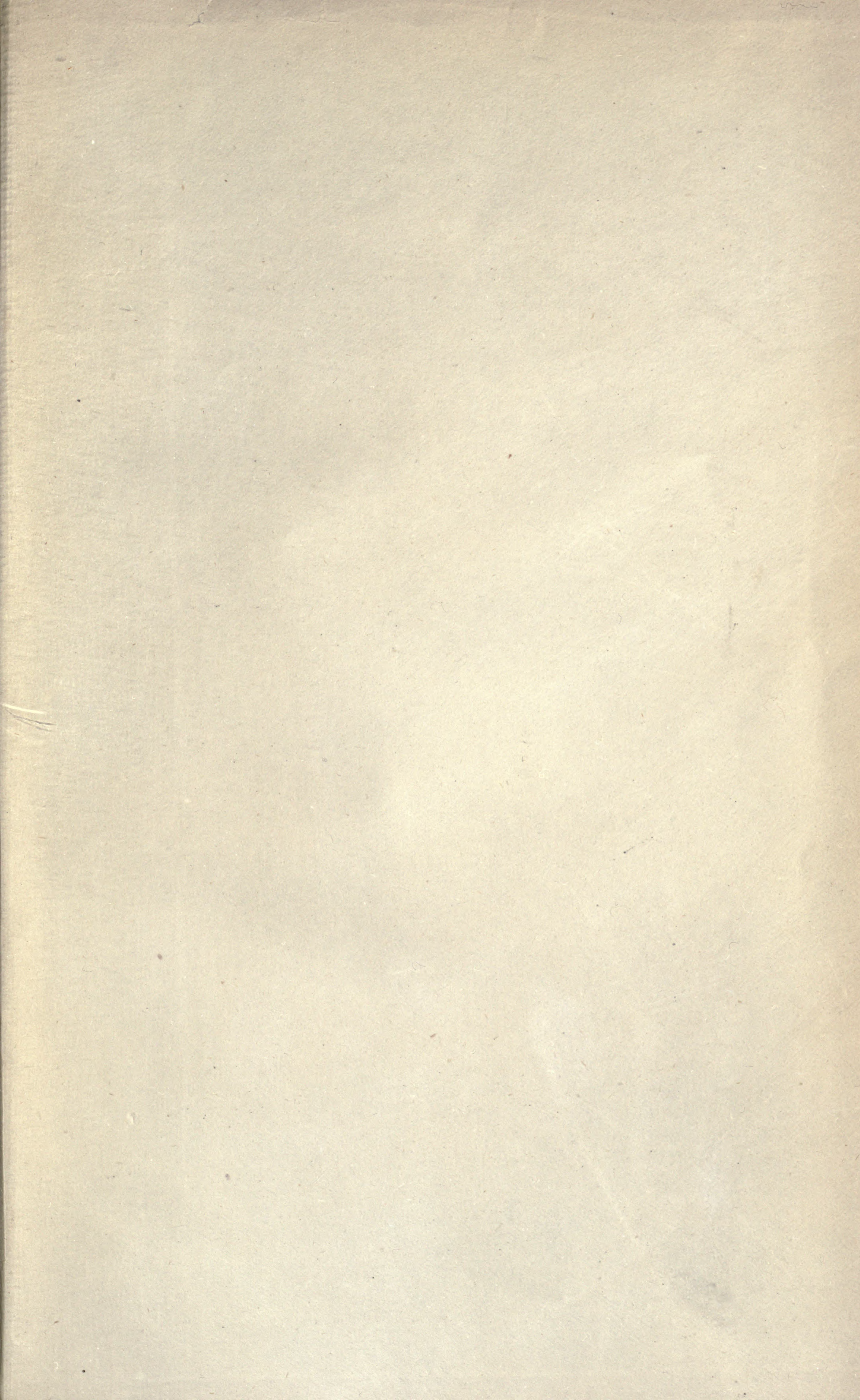

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